

ESTTA Tracking number: **ESTTA622334**

Filing date: **08/19/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212477
Party	Plaintiff Balance Bar Company
Correspondence Address	R GLENN SCHROEDER SCHROEDER LAW PC 110 COOPER STREET , #605 BABYLON, NY 11702 UNITED STATES docket@schroederlawpc.com,gschroeder@schroederlawpc.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	R. Glenn Schroeder
Filer's e-mail	docket@schroederlawpc.com,gschroeder@schroederlawpc.com
Signature	/r. glenn schroeder/
Date	08/19/2014
Attachments	Opposer's_Fifth_Notice_of_Reliance_Part-1.pdf(4291143 bytes) Opposer's_Fifth_Notice_of_Reliance_Part-2.pdf(4056996 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 85/751,520
Published for Opposition on March 19, 2013
Trademark: EARTH BALANCE

BALANCE BAR COMPANY,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.

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Opposition No. 91212477

OPPOSER'S FIFTH NOTICE OF RELIANCE

Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, Opposer, Balance Bar Company, hereby submits, makes of record in connection with this opposition proceeding, and notifies Applicant of its reliance upon the attached documents obtained from the USPTO's TTABVue (Trademark Trial and Appeal Board Inquiry System) system on May 25, 2014.

These documents are relevant to this proceeding because, among other things, they demonstrate that Opposer has and continues to conduct a vigorous enforcement program to prevent and/or limit the registration of conflicting BALANCE-formative marks. True and correct copies of select Docket Sheets, Notices of Opposition and Petitions for Cancellation are attached hereto as Exhibits E1-E16:

Exhibit E1: Balance Bar Company v. Balance Nutrition, LLC - Cancellation No. 92028520 (HEARTY BALANCE)

- Exhibit E2: Balance Bar Company v. Malt-O-Company - Cancellation No. 92028885
(BALANCE)
- Exhibit E3: Balance Bar Company v. DSM IP Assets B.V. - Opposition No. 91191491
(PEP2BALANCE)
- Exhibit E4: Balance Bar Company v. Metagenics, Inc. - Opposition No. 91115723
(TRIPLE BALANCE)
- Exhibit E5: Balance Bar Company v. Metagenics, Inc. - Opposition No. 91116290
(FLOW BALANCE)
- Exhibit E6: Balance Bar Company v. BioAdvantex Pharma Inc. - Cancellation No.
92031797 (ULTIMATE BALANCE)
- Exhibit E7: Balance Bar Company v. Neways, Inc. - Cancellation No. 92040810
(NEWAYS EXTREME BALANCE)
- Exhibit E8: Balance Bar Company v. Corporacion Industrial Alimenticia, S.A. de C.V. -
Opposition No. 91188830 (BALANCE BIO 3)
- Exhibit E9: Balance Bar Company v. Corporacion Industrial Alimenticia, S.A. de C.V. -
Opposition No. 91188840 (BALANCE BIO 3 REDUCE)
- Exhibit E10: Balance Bar Company v. Pharmavite LLC - Opposition No. 91188832
(EQUOL BALANCE)
- Exhibit E11: Balance Bar Company v. Mind Mine - Opposition No. 91192572
(THYRO-BALANCE)
- Exhibit E12: Balance Bar Company v. Tiens Group Co., Ltd. - Opposition No. 91193619
(VITAL BALANCE)
- Exhibit E13: Balance Bar Company v. Tiens Group Co., Ltd. - Opposition No. 91193620
(VITAL BALANCE)
- Exhibit E14: Balance Bar Company v. Lighterlife UK Limited - Opposition No.
91197149 (LIGHTER LIFE IN BALANCE)
- Exhibit E15: Balance Bar Company v. Doctor pHresh Nutritionals, L.L.C. - Opposition
No. 91203829 (PHRESH BALANCE)
- Exhibit E16: Balance Bar Company v. GFA Brands, Inc. - Opposition No. 91212477
(EARTH BALANCE)

Respectfully submitted,

BALANCE BAR COMPANY

Dated: 19 August 2014

By: 

R. Glenn Schroeder
Schroeder Law PC
110 Cooper Street #605
Babylon, New York 11702
Telephone: (631) 649-6109
Facsimile: (631) 649-8126
gschroeder@schroederlawpc.com

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S FIFTH NOTICE OF RELIANCE has been served via e-mail and first-class mail this 19th day of August, 2014 upon the following:

Johanna Wilbert, Esq.
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202
johanna.wilbert@quarles.com



R. Glenn Schroeder

EXHIBIT E1



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

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Cancellation

Number: 92028520**Status:** Terminated**Filing Date:** 01/26/1999**Status Date:** 11/22/2002**General Contact Number:** 571-272-8500**Interlocutory Attorney:** ANDREW P BAXLEY

Defendant

Name: BALANCE NUTRITION, LLC**Correspondence:** RAYMOND I. GERALDSON, JR.
PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON 311 SOUTH WACKER DR., SUITE 5000
CHICAGO, IL 60606
UNITED STATES**Serial #:** 74396952 Application File**Registration #:** 1956717**Application Status:** Registered**Mark:** HEARTY BALANCE

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** JENIFER DEWOLF PAINE
PROSKAUER, ROSE LLP
1585 BROADWAY
NEW YORK, NY 10036
UNITED STATES**Serial #:** 75321186 Application File**Registration #:** 2659753**Application Status:** Renewed**Mark:** BALANCE BAR

Prosecution History

#	Date	History Text	Due Date
25	11/22/2002	TERMINATED	
24	08/06/2002	REMAILED BD'S #20 TO PL AT NEW YORK ADDR ESS	
<u>23</u>	06/13/2002	<u>PL'S #20 RETURNED UNDELIVERABLE</u>	
22	05/20/2002	TERMINATED	
<u>21</u>	09/05/2000	<u>DF'S MOT TO EXT W/CON</u>	
<u>20</u>	05/20/2002	<u>BOARD'S DECISION: DISMISSED W/O PREJ</u>	
<u>19</u>	04/25/2002	<u>PLAINTIFF'S W/D WITHOUT PREJUDICE W/CON SENT</u>	
<u>18</u>	10/30/2000	<u>P'S MOTION FOR AN EXTENSION OF TIME</u>	
17	12/11/2001	PL'S MOT TO EXT W/CON	
16	10/29/2001	SUSPENDED	

15	09/27/2001	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
14	08/03/2001	TRIAL DATES RESET	
13	01/12/2001	SUSPENDED	
12	12/19/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
11	05/11/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
10	04/07/2000	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	
9	01/06/2000	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	
8	10/08/1999	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
7	08/23/1999	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	
6	06/04/1999	ANSWER	
5	04/30/1999	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	
4	04/01/1999	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	
3	02/18/1999	PENDING, INSTITUTED	
2	02/18/1999	NOTICE SENT; TRIAL DATES RESET; ANSWER DUE	03/30/1999
1	01/26/1999	FILED AND FEE	

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TTABVUE. Trademark Trial and Appeal Board Inquiry System

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Cancellation

Number: 92028885**Status:** Terminated**Filing Date:** 04/23/1999**Status Date:** 04/03/2003**General Contact Number:** 571-272-8500**Interlocutory Attorney:** PETER W CATALDO

Defendant

Name: MALT-O-COMPANY**Correspondence:** JOHN A. CLIFFORDMERCHANT & GOULD P.C.
P.O. BOX 2910
MINNEAPOLIS, MN 55402
UNITED STATES**Serial #:** 75245401 [Application File](#)**Registration #:** 2171979**Application Status:** Renewed**Mark:** BALANCE

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** LUCY B. ARANTRUSS, AUGUST & KABAT
12424 WILSHIRE BLVD STE 1200
LOS ANGELES, CA 90025
UNITED STATES**Serial #:** 75331009 [Application File](#)**Registration #:** 2205287**Application Status:** Cancelled - Section 8**Mark:** BALANCE**Serial #:** 75321184 [Application File](#)**Registration #:** 2221309**Application Status:** Cancelled - Section 8**Mark:** BALANCE

Prosecution History

#	Date	History Text	Due Date
28	04/03/2003	TERMINATED	
27	04/03/2003	BOARD'S DECISION: DISMISSED	
26	04/03/2003	<u>CANC & CC ARE DISMISSED</u>	
25	03/04/2003	<u>WITHDRAWAL OF PETITION FOR CANCELLATION</u>	
24	02/10/2003	<u>TRIAL DATES RESET</u>	
23	05/30/2002	<u>CHANGE OF ADDRESS FOR DEF.</u>	
22	05/09/2002	<u>PARTIES ALLOWED UNTIL THIRTY DAYS TO INF ORM BOARD OF STATUS OF</u>	

SETTLEMENT.21 07/19/2001 D'S MOTION FOR AN EXTENSION OF TIME

20 06/21/2001 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

19 05/25/2001 SUSPENDED

18 05/21/2001 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

17 04/20/2001 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

16 03/22/2001 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

15 01/22/2001 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

14 11/20/2000 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

13 09/12/2000 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

12 09/13/2000 TRIAL DATES RESET

11 07/12/2000 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

10 05/08/2000 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

9 02/23/2000 SUSPENDED

8 02/04/2000 P'S MOT FOR EXTEN. OF TIME W/ CONSENT

7 12/17/1999 D'S MOT FOR EXTEN. OF TIME W/ CONSENT

6 09/08/1999 PL 7-30-99 REPLY NOTED TRIAL DATES REMAIN SET

5 07/30/1999 ANSWER TO COUNTERCLAIM

4 07/06/1999 DF ANSWER WITH COUNTER CLAIMS

3 05/26/1999 PENDING, INSTITUTED

2 05/26/1999 NOTICE SENT; TRIAL DATES RESET; ANSWER DUE

07/05/1999

1 04/23/1999 FILED AND FEE

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Opposition

Number: 91191491**Status:** Terminated**Filing Date:** 08/11/2009**Status Date:** 02/17/2010**General Contact Number:** 571-272-8500**Interlocutory Attorney:** MARY CATHERINE FAINT

Defendant

Name: DSM IP Assets B.V.**Correspondence:** Duane M. Byers

Nixon & Vanderhye P.C.

901 North Glebe Road, Suite 1100

Arlington, VA 22203

UNITED STATES

nixonptomail@nixonvan.com, dmb@nixonvan.com

Serial #: 79053062[Application File](#)**Application Status:** IR CANCELLED; US APPLICATION ABANDONED**Mark:** PEP2BALANCE

Plaintiff

Name: Balance Bar Company**Correspondence:** David I. Greenbaum

Edwards Angell Palmer & Dodge LLP

FDR Station P.O. Box 130

New York, NY 10150

UNITED STATES

trademark@eapdlaw.com

Serial #: 76194400[Application File](#)**Application Status:** Renewed**Mark:** BALANCE**Registration #:** 2745850**Serial #:** 75321186[Application File](#)**Application Status:** Renewed**Mark:** BALANCE BAR**Registration #:** 2659753**Serial #:** 78416165[Application File](#)**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR**Registration #:** 3036771**Serial #:** 77053653[Application File](#)**Application Status:** Registered**Mark:** BALANCE BARE**Registration #:** 3436917**Serial #:** 75854595[Application File](#)**Application Status:** Renewed**Registration #:** 2636101

Mark: BALANCE GOLD**Prosecution History**

#	Date	History Text	Due Date
11	02/17/2010	TERMINATED	
<u>10</u>	02/17/2010	<u>BOARD'S DECISION: SUSTAINED</u>	
<u>9</u>	12/24/2009	<u>NOTICE OF DEFAULT</u>	
<u>8</u>	12/03/2009	<u>CHANGE OF CORRESPONDENCE ADDRESS</u>	
<u>7</u>	10/15/2009	<u>EXTENSION OF TIME GRANTED</u>	
<u>6</u>	10/15/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>5</u>	09/11/2009	<u>EXTENSION OF TIME GRANTED</u>	
<u>4</u>	09/11/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
3	08/13/2009	PENDING, INSTITUTED	
<u>2</u>	08/13/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	09/22/2009
<u>1</u>	08/11/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA300192**Filing date: **08/11/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	08/12/2009
Address	Three Lakes Drive Northfield, IL 60093 UNITED STATES
Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius LLP 1111 Pennsylvania Ave., NW; Attn: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, kbutcher@morganlewis.com, kaltoff@morganlewis.com Phone:202.739.5093

Applicant Information

Application No	79053062	Publication date	04/14/2009
Opposition Filing Date	08/11/2009	Opposition Period Ends	08/12/2009
International Registration No.	0962153	International Registration Date	03/14/2008
Applicant	DSM IP Assets B.V. Het Overloon 1 TE Heerlen, NL6411 NETHERLANDS		

Goods/Services Affected by Opposition


Class 030.

All goods and services in the class are opposed, namely: Flour and preparations made from cereals, namely, breakfast cereals and ready to eat cereal derived food bars, cereal based snack food, cereal based energy bars; bread, pastry and confectionery, namely, fondants and pastilles; ready-to-eat cereal bars; snacks included in this class, namely, grain-based snack foods; frozen, prepared or packaged meals consisting primarily of pasta or rice; sweet or savory cookies; cake


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements		

U.S. Registration No.	3036771	Application Date	05/10/2004
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00		

	Protein-based, nutrient-dense snack bars		
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U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts		

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Attachments	76194400#TMSN.gif (1 page)(bytes) 78416165#TMSN.jpeg (1 page)(bytes) 77053653#TMSN.jpeg (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) PEP2BALANCE Notice of Opposition.pdf (6 pages)(17224 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kristin H. Altoff/
Name	Kristin H. Altoff
Date	08/11/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Trademark Application Serial No. 79/053062

Filed: March 14, 2008

For the Mark: PEP2BALANCE

Balance Bar Company,)
)
)
Opposer,)
)
v.)
)
DSM IP Assets B.V.,)
)
Applicant.)
)

NOTICE OF OPPOSITION

Opposer, Balance Bar Company, a Delaware corporation with a business address of Three Lakes Drive, Northfield, Illinois 60093 ("Opposer"), believes it will be damaged by registration in Class 30 of the designation PEP2BALANCE that is the subject matter of Application Serial No. 79/053,062, filed by DSM IP Assets B.V. ("Applicant"). Opposer hereby opposes the same under the provisions of Sections 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the "Lanham Act"), 15 U.S.C. §§ 1052(d), 1063 and 1125(c) and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

1. For many years, and since long prior to March 14, 2008 (the filing date of the application for the PEP2BALANCE designation), October 2, 2007 (the claimed Section 67 priority date), and any date of first use upon which Applicant can rely, Opposer has engaged in

the manufacture and sale of snack bar products throughout the United States advertised and sold under the BALANCE trademark.

3. In addition to Opposer's long-standing common law rights in and to the BALANCE trademark, Opposer owns numerous registrations issued by the United States Patent and Trademark Office for the BALANCE trademark, including:

4. The registrations referenced above are valid and subsisting in the name of Balance Bar Company, are in full force and effect, and constitute *prima facie* and/or conclusive evidence of Opposer's exclusive right to use the mark in commerce in connection with the goods specified in the registrations.

5. The following registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations: Registration Nos. 2,636,101; 2,659,753; and 2,745,850.

6. On March 14, 2008, Applicant filed a Madrid Protocol-based application under Section 66(a) of the Lanham Act, 15 U.S.C. § 1141f(a), to register the designation PEP2BALANCE (Serial No. 79/053,062).

7. The application for PEP2BALANCE (Serial No. 79/053,062) currently covers goods in Classes 1, 5, 29, 30 and 32, including the following Class 30 goods:

“flour and preparations made from cereals, namely, breakfast cereals and ready to eat cereal derived food bars, cereal based snack food, cereal based energy bars; bread, pastry and confectionery, namely, fondants and pastilles; ready-to-eat cereal bars; snacks included in this class, namely, grain-based snack foods; frozen, prepared or packaged meals consisting primarily of pasta or rice; sweet or savory cookies; cake.”

8. Applicant's PEP2BALANCE designation was published for opposition in the *Official Gazette* on April 14, 2009.

9. The Trademark Trial and Appeal Board extended the opposition period for the PEP2BALANCE designation by granting Opposer's timely request for an extension. The opposition period for Application Serial No. 79/053,062 is currently set to expire on August 12, 2009. Opposer, therefore, timely files this opposition.

10. Through its longstanding and continuous use of the BALANCE trademark, Opposer has acquired exclusive rights in the BALANCE trademark that substantially predate any rights upon which Applicant may rely.

11. Opposer's BALANCE trademark is famous and became famous before the filing date or any use of the PEP2BALANCE designation by Applicant.

12. The “BALANCE” portion of Applicant’s PEP2BALANCE designation is identical to that Opposer’s BALANCE trademark.

13. The Class 30 goods for which Applicant seeks registration under the PEP2BALANCE designation are identical or related to the goods in connection with which Opposer’s BALANCE trademark is used.

14. Opposer believes it will be damaged by registration of Applicant’s PEP2BALANCE designation for goods in Class 30 under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the BALANCE trademark used by Opposer in the United States as to be likely, when used on or in connection with the goods identified in Class 30 of the PEP2BALANCE application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Opposer believes it will be damaged by registration of the PEP2BALANCE designation for goods in Class 30 under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the PEP2BALANCE designation in Class 30 is likely to dilute the distinctive quality of Opposer's famous BALANCE trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 79/053062 in Class 30 and requests the opposition be sustained and that registration to Applicant be refused.

Dated: August 11, 2009

Respectfully submitted,

By: /s/ Kristin H. Altoff

Karen A. Butcher

Kristin H. Altoff

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Ave., N.W.

Washington, D.C. 20004

Tel: (202) 739-3000

Fax: (202) 739-3001

Attorneys for Opposer

Balance Bar Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2009, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Attorney of Record at the following address:

Duane M. Byers
Nixon & Vanderhye P.C.
901 North Glebe Road
Suite 1100
Arlington, VA 22203

/s/ Kristin H. Altoff

EXHIBIT E4



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91115723

Status: Terminated

Filing Date: 10/08/1999

Status Date: 09/17/2001

General Contact Number: 571-272-8500

Interlocutory Attorney: CHERYL A BUTLER

Defendant

Name: METAGENICS, INC.Correspondence: GRANT R. CLAYTON
CLAYTON HOWARTH & CANNON
P.O. BOX 1909
SANDY, UT 84091
UNITED STATESSerial #: 75591147 [Application File](#)Registration #: 2508408

Application Status: Cancelled - Section 8

Mark: TRIPLE BALANCE

Plaintiff

Name: BALANCE BAR COMPANYCorrespondence: LUCY B. ARANT
RUSS, AUGUST & KABAT
SUITE 1200 12424 WILSHIRE BOULEVARD
LOS ANGELES, CA 90025
UNITED STATESSerial #: 74347044 [Application File](#)Registration #: 1956964

Application Status: Cancelled - Section 8

Mark: BALANCE, THE COMPLETE NUTRITIONAL FOOD

Prosecution History

#	Date	History Text	Due Date
16	09/17/2001	TERMINATED	
15	09/17/2001	BD'S DECISION: DISMISSED W/ PREJUDICE	
14	08/06/2001	PL'S WITHDRAWAL OF OPP W/O PREJUDICE	
13	06/01/2001	PROC'S RESUMED TRIAL DATES RESET	
12	11/14/2000	DEF'S CHANGE OF ADDRESS	
11	11/13/2000	P'S MOT TO SUSP PEND SETLMT NEGOT W CNST	
10	10/13/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
9	10/04/2000	PROCS SUSPENDED 6 MONTHS	
8	09/14/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
7	08/14/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	

6	08/07/2000	PL'S MOT TO EXT W/CON, BUT NO SIGNATURE	
5	12/11/1999	ANSWER	
4	11/08/1999	D'S CHANGE OF ADDRESS	
3	10/28/1999	PENDING, INSTITUTED	
2	10/28/1999	NOTICE SENT; TRIAL DATES RESET; ANSWER DUE	12/07/1999
1	10/08/1999	FILED AND FEE	

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EXHIBIT E5



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91116290**Status:** Terminated**Filing Date:** 11/01/1999**Status Date:** 08/21/2001**General Contact Number:** 571-272-8500**Interlocutory Attorney:** PETER W CATALDO

Defendant

Name: METAGENIC, INC.**Correspondence:** GRANT R. CLAYTONCLAYTON, HOWARTH & CANNON, P.C.
P.O. BOX 1909
SANDY, UT 84091
UNITED STATES**Serial #:** 75577698 [Application File](#)**Registration #:** 2499330**Application Status:** Cancelled - Section 8**Mark:** FLOW BALANCE

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** LUCY B. ARANTRUSS, AUGUST & KABAT
12424 WILSHIRE BOULEVARD SUITE 1200
LOS ANGELES, CA 90025
UNITED STATES**Serial #:** 75331009 [Application File](#)**Registration #:** 2205287**Application Status:** Cancelled - Section 8**Mark:** BALANCE

Prosecution History

#	Date	History Text	Due Date
14	08/21/2001	TERMINATED	
13	08/21/2001	TERMINATED	
12	08/21/2001	BOARD'S DECISION: DISMISSED	
<u>11</u>	08/06/2001	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>10</u>	08/10/2001	<u>TRIAL DATES RESET</u>	
9	11/27/2000	SUSPENDED	
8	11/13/2000	P'S MOT TO SUSP PEND SETLMT NEGOT W CNST	
7	10/13/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	
6	09/11/2000	DF UNDELIVERABLE BY P.O.	
5	08/10/2000	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	

4	01/26/2000	ANSWER	
3	12/17/1999	PENDING, INSTITUTED	
2	12/17/1999	NOTICE SENT; TRIAL DATES RESET; ANSWER DUE	01/26/2000
1	11/01/1999	FILED AND FEE	

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Cancellation

Number: 92031797**Status:** Terminated**Filing Date:** 02/01/2001**Status Date:** 04/18/2002**General Contact Number:** 571-272-8500**Interlocutory Attorney:** FRANCES S WOLFSON

Defendant

Name: BIOADVANTEX PHARMA, INC.**Correspondence:** GORDON E. R. TROY
GORDON E. R. TROY, PC
P.O. BOX 368
CHARLOTTE, VT 05445
UNITED STATES**Serial #:** 75437609 [Application File](#)**Registration #:** 2288247**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** ULTIMATE BALANCE

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** JENIFER DEWOLF PAINE
PROSKAUER ROSE LLP
1585 BROADWAY
NEW YORK, NY 10036
UNITED STATES**Serial #:** 75321184 [Application File](#)**Registration #:** 2221309**Application Status:** Cancelled - Section 8**Mark:** BALANCE

Prosecution History

#	Date	History Text	Due Date
16	02/12/2003	TERMINATED	
15	05/01/2002	<u>PROPOSED AMENDMENT APPROVED; COUNTERCLAIM DISMISSED W/O PREJ</u>	
14	06/05/2002	DELETE ENTRY	
13	02/19/2002	<u>AMENDMENT</u>	
12	04/09/2002	<u>STIP MOT TO DISMISS COUNTERCLAIMS</u>	
11	04/08/2002	TERMINATED	
10	04/08/2002	BOARD'S DECISION: DISMISSED W/O PREJ	
9	03/14/2002	<u>CANC DISMISSED; 30 DAYS TO INFORM BOARD</u>	
8	01/17/2002	<u>W/D OF CANCELLATION WO PREJ</u>	
7	01/07/2002	<u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	

6 05/09/2001 DEF'S ANSWER; DEFENSES AND COUNTERCLAIM
5 07/11/2001 #2 REMAILED; ANSWER DUE 8-20-01; TD RESET
4 04/13/2001 DEF'S RETURNED UNDELIVERABLE
3 03/30/2001 PENDING, INSTITUTED
2 03/30/2001 NOTICE AND TRIAL DATES SENT; ANSWER DUE:
1 02/01/2001 FILED AND FEE

05/09/2001

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Cancellation

Number: 92040810**Status:** Terminated**Filing Date:** 07/19/2002**Status Date:** 06/09/2003**General Contact Number:** 571-272-8500**Interlocutory Attorney:** JYLL S TAYLOR

Defendant

Name: NEWAYS, INC.**Correspondence:** JOHN C. STRINGHAMWORKMAN, NYDEGGER & SKELEY
1000 EAGLE GATE TOWER 60 EAST SOUTH TEMP LE
SALT LAKE CITY, UT 84111
UNITED STATES**Serial #:** 75933594 [Application File](#)**Registration #:** 2431508**Application Status:** Cancelled - Section 18**Mark:** NEWAYS EXTREME BALANCE

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** JENIFER DEWOLF PAINEPROSKAUER ROSE LLP
1585 BROADWAY NEW YORK, NY 10036**Serial #:** 76194400 [Application File](#)**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE

Prosecution History

#	Date	History Text	Due Date
11	06/09/2003	TERMINATED	
<u>10</u>	06/05/2003	<u>COMM'RS ORDER CANC. REG</u>	
<u>9</u>	05/22/2003	<u>BOARD'S DECISION: GRANTED</u>	
<u>8</u>	04/02/2003	<u>D'S SURRENDER OF RN 2,431,508</u>	
<u>7</u>	12/04/2002	<u>GRANTED D'S #4; CC TRIAL DATES SET</u>	
<u>6</u>	11/12/2002	<u>PL'S ANSWER TO CC</u>	
<u>5</u>	10/09/2002	<u>ANSWER & CC</u>	
<u>4</u>	09/10/2002	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>3</u>	07/30/2002	PENDING, INSTITUTED	
<u>2</u>	07/30/2002	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	09/08/2002
<u>1</u>	07/19/2002	<u>FILED AND FEE</u>	

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U.S. Patent & TMO/c/TM Mail Rcpt Dt. #71

BALANCE BAR COMPANY

V.

Registrant.

PETITION TO CANCEL

TRADEMARK TRIAL AND
APPEAL BOARD
02 JUL 95 AM 8:33

07/24/2002 SWILSON 00000102 162500 2431508
01 FC:376 300.00 CH

2. Petitioner has exercised great care and diligence in the conduct of its business activities in connection with the BALANCE® mark.

3. The BALANCE® brand of nutritional food bars has become one of the leading food bar brands, with hundreds of millions of dollars in sales, millions of dollars in advertising and promotion, and extensive unsolicited media attention. Thus, and as a result of the long, extensive, continuous, and exclusive use and advertising of BALANCE® products, the BALANCE® brand is extremely well-known among the consuming public and immediately conveys to consumers the high quality of the food bar products sold under the BALANCE® mark.

4. The long, extensive, and continuous use of the BALANCE® mark by Petitioner and the extensive advertising, promotion, and commercial success of BALANCE® products have caused the BALANCE® mark to achieve enormous secondary meaning in the minds of the public. Petitioner's BALANCE® mark has achieved nation-wide recognition as identifying goods originating with Petitioner, has achieved outstanding commercial success, and constitutes a famous trademark entitled to the broadest scope of protection, including protection against dilution within the meaning of 15 U.S.C. § 1125(c).

5. The BALANCE® mark is the subject of United States Trademark Registrations Nos. 2,221,309 for BALANCE for "nutritional food supplements" and 2,205,287 for BALANCE (design) for "food and nutritional supplements." Said registrations are valid and subsisting, and copies are attached hereto as Exhibit A.

6. Petitioner also has a pending application (passed by the Examiner and awaiting publication) on file with the United States Patent and Trademark Office (Serial No. 76,194,400) for the mark BALANCE for "food bars." In that application, Petitioner claims a first use date of 1992.

7. On information and belief, Registrant began using the mark NEWAYS EXTREME BALANCE (the "Registered Mark") in February of 2000, long after Petitioner's use of its famous BALANCE® mark and long after Petitioner's BALANCE® mark became famous.

8. Petitioner's rights in its famous BALANCE® mark are superior to Registrant's rights in the Registered Mark, as Petitioner has priority of use.

9. Registrant's NEWAYS EXTREME BALANCE mark is identical in substantive part to Petitioner's famous BALANCE® mark, with the addition of the generic and/or descriptive term "EXTREME" and Neways' house mark NEWAYS.

10. The addition of Registrant's house mark NEWAYS does nothing to dispel confusion, but rather only creates the suggestion that Registrant's product sold under the NEWAYS EXTREME BALANCE mark is a subsidiary product of Petitioner's famous BALANCE® Bar product. In fact, the way Registrant actually uses the mark, EXTREME BALANCE appears as a unitary mark, with the NEWAYS portion of the mark reduced to the extent that it is barely visible from an arm's length away. A photocopy of Registrant's product sold under the NEWAYS EXTREME BALANCE mark is attached as Exhibit B.

11. The goods sold under the Registered Mark are identical to the goods sold under Petitioner's BALANCE® mark. Both parties sell nutritional food bars under their respective marks.

12. Due to the similarity of the Registered Mark to Petitioner's famous BALANCE® mark, and due to the identical nature of the goods sold under the Registered Mark to the goods sold under Petitioner's BALANCE® mark, as well as the other factors that contribute to a likelihood of confusion, the Registered Mark is confusingly similar to Petitioner's BALANCE® mark within the meaning of 15 U.S.C. §§ 1114 and 1125(a).

13. Continued registration of the mark ULTIMATE BALANCE by Registrant will dilute the distinctive quality of Petitioner's famous BALANCE® mark within the meaning of 15 U.S.C. § 1125(c).

14. Petitioner is likely to be damaged by the continued registration of U.S. Registration No. 2,431,508 within the meaning of 15 U.S.C. § 1064, as continued registration of Registrant's mark will be in derogation of Petitioner's exclusive right to use its BALANCE® mark.

WHEREFORE, Petitioner believes that it will be damaged by the continued registration of Registration No. 2,431,508 within the meaning of 15 U.S.C. § 1064 and prays that this petition be sustained.

This petition is being filed in duplicate. The filing fee of \$200 is enclosed.

BALANCE BAR COMPANY

By its attorneys

Date: 7/17/02

Jennifer deWolf Paine

Brendan J. O'Rourke
Jennifer deWolf Paine
Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Tel.: 212.969.3000
Fax: 212.969.2900

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STEPHEN R. Dwyer
(Typed or Printed Name of Person Mailing Paper or Fee)

SAR
(Signature of Person Mailing Paper or Fee)

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52.

Reg. No. 2,221,309

United States Patent and Trademark Office

Registered Feb. 2, 1999

**TRADEMARK
PRINCIPAL REGISTER**

BALANCE

**BIO-ENGINEERED FOODS, INC. (DELAWARE
CORPORATION)
1015 MARK AVENUE
CARPINTERIA, CA 43013**

**FOR: NUTRITIONAL FOOD SUPPLEMENTS,
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).**

**FIRST USE 7-12-1992; IN COMMERCE
7-12-1992.**

OWNER OF U.S. REG. NO. 1,956,964.

SER. NO. 75-321,184, FILED 7-8-1997.

JOHN MICHOS, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,205,287

United States Patent and Trademark Office

Registered Nov. 24, 1998

**TRADEMARK
PRINCIPAL REGISTER**

BALANCE

**BIO-ENGINEERED FOODS, INC. (DELAWARE
CORPORATION)
1015 MARK AVENUE
CARPINTERIA, CA 43013**

**FIRST USE 7-12-1992; IN COMMERCE
7-12-1992.**

OWNER OF U.S. REG. NO. 1,956,964.

**FOR: FOOD AND NUTRITIONAL SUPPLE-
MENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51
AND 52).**

SER. NO. 75-331,009, FILED 7-25-1997.

JOHN MICHOS, EXAMINING ATTORNEY

Neways

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LOS ANGELES
WASHINGTON
BOCA RATON
NEWARK
PARIS

Stephen R. Dwyer
Trademark Administrator

Direct Dial 212.969.441
sdwyer@proskauer.com



07-19-2002

U.S. Patent & TMO/c/TM Mail Rpt Dt. #71

July 17, 2002

BOX TTAB - FEE

Assistant Commissioner for Trademarks
United States Patent and Trademark Office
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Balance Bar Company
Petition to Cancel
Mark: NEWAYS EXTREME BALANCE
Reg. No.: 2,431,508

TRADEMARK TRIAL AND
APPEAL BOARD
02 JUL 25 AM 8:33

Dear Sir:

Enclosed is a Petition to Cancel in connection with the above-referenced registration. Please acknowledge receipt of the enclosed Petition to Cancel by stamping the acknowledgment card and returning it to this office.

This request is being filed in duplicate as required by 37 C.F.R. Section 2.102(d).

Please charge all required fees to existing USPTO deposit account # 16-2500, referencing our file number 41724-001. A duplicate copy of this cover letter is enclosed for your convenience.

Respectfully submitted,

Stephen R. Dwyer

Enclosures

EXHIBIT E8



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Opposition

Number: 91188830**Status:** Terminated**Filing Date:** 02/12/2009**Status Date:** 11/06/2009**General Contact Number:** 571-272-8500**Interlocutory Attorney:** ANDREW P BAXLEY

Defendant

Name: Corporacion Industrial Alimenticia, S.A. de C.V.**Correspondence:** JEFFREY A. SMITHMILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD STE 1400
ARLINGTON, VA 22201-3360
UNITED STATES
Culver@mwzb.com**Serial #:** 77268767 Application File**Registration #:** 4268437**Application Status:** Registered**Mark:** BALANCE BIO 3

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** TMSUMorgan Lewis & Bockius LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
UNITED STATES
trademarks@morganlewis.com, kbutcher@morganlewis.com,
kaltoff@morganlewis.com**Serial #:** 76194400 Application File**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 78416165 Application File**Registration #:** 3036771**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR**Serial #:** 77053653 Application File**Registration #:** 3436917**Application Status:** Registered**Mark:** BALANCE BARE**Serial #:** 75854595 Application File**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD

Prosecution History

#	Date	History Text	Due Date
16	11/06/2009	TERMINATED	
<u>15</u>	11/06/2009	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
<u>14</u>	11/06/2009	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>13</u>	11/06/2009	<u>RESPONSE DUE 30 DAYS (DUE DATE)</u>	12/06/2009
<u>12</u>	10/30/2009	<u>MOTION TO AMEND APPLICATION</u>	
<u>11</u>	08/10/2009	<u>SUSPENDED</u>	
<u>10</u>	08/10/2009	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
<u>9</u>	06/04/2009	<u>SUSPENDED</u>	
<u>8</u>	06/04/2009	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
<u>7</u>	05/27/2009	<u>APPEARANCE</u>	
<u>6</u>	03/25/2009	<u>CONSOLIDATION GRANTED</u>	
<u>5</u>	03/24/2009	<u>MOTION TO CONSOLIDATE</u>	
<u>4</u>	03/24/2009	<u>ANSWER</u>	
<u>3</u>	02/12/2009	PENDING, INSTITUTED	
<u>2</u>	02/12/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/24/2009
<u>1</u>	02/12/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA266221**Filing date: **02/12/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BALANCE BAR COMPANY		
Entity	Corporation	Citizenship	DELAWARE
Address	THREE LAKES DRIVE NORTHFIELD, IL 60093 UNITED STATES		

Correspondence information	SUSAN H. FROHLING TRADEMARK COUNSEL BALANCE BAR COMPANY THREE LAKES DRIVE NORTHFIELD, IL 60093 UNITED STATES TRADEMARK@KRAFT.COM Phone:847-646-8657
----------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------

Applicant Information

Application No	77268767	Publication date	01/13/2009
Opposition Filing Date	02/12/2009	Opposition Period Ends	02/12/2009
Applicant	Corporación Industrial Alimenticia, S.A. de C.V. Av. de la Industria S/N Colonia El Tránsito Parque Industrial, CP54614 MEXICO		

Goods/Services Affected by Opposition


Class 005. Opposed goods and services in the class: Dietary supplements; dietary food supplements; dietary supplement drinks; food supplements; herbal supplements; homeopathic supplements; meal replacement and dietary supplement drink mixes; nutritional supplements; mineral supplements; powdered nutritional supplement drink mix; vitamin supplements; mineral nutritional supplements; nutritionally fortified beverages; nutritionally fortified water; nutritional energy bars for use as a meal substitute; nutritional shakes for use as a meal substitute


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority	NONE

		Date	
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	3036771	Application Date	05/10/2004
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		

Design Mark	BALANCE BARE
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	BALANCE GOLD		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Attachments	76194400#TMSN.gif (1 page)(bytes) 78416165#TMSN.jpeg (1 page)(bytes) 77053653#TMSN.jpeg (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) BALANCE BIO3 Notice of Opposition.pdf (10 pages)(1135654 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/SUSAN H. FROHLING/
Name	SUSAN H. FROHLING

Date	02/12/2009
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Trademark Application Serial No. 77/268767

Filed: August 30, 2007

For the Mark: **BALANCE BIO3**

Balance Bar Company

Opposer,

v.

Corporacion Industrial Alimenticia, S.A. de C.V.

Applicant.

NOTICE OF OPPOSITION

Opposer, Balance Bar Company, a Delaware corporation with a business address of Three Lakes Drive, Northfield, Illinois 60093, hereby opposes registration of the mark BALANCE BIO3 that is the subject matter of Application Serial No. 77/268767, published in the *Official Gazette* of January 13, 2009, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

CLAIM I – SECTION 2(d)

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has engaged in the manufacture and sale of snack bar products throughout the United States sold under the BALANCE trademark.

2. By virtue of the excellence of Opposer's BALANCE products and extensive promotional activities and sales thereof, the BALANCE mark is a famous mark such that the public has come to identify the business and products denominated by the mark as those of Opposer.

3. Opposer is the owner of numerous registrations in the United States Patent and Trademark Office for the BALANCE trademark, including:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2745850	Protein based, nutrient-dense snack bars
BALANCE BAR	3036771	Protein based, nutrient-dense snack bars
BALANCE BARE	3436917	Protein based, nutrient-dense snack bars; and grain-based food bars also containing fruits and nuts
BALANCE GOLD	2636101	Snack bars

The registrations are valid and subsisting in the name of Balance Bar Company. Packaging images of the Opposer's BALANCE trademark are attached hereto as Exhibit A.

4. Applicant has filed an intent to use application to register the mark BALANCE BIO3 for dietary supplements; dietary food supplements; dietary supplement drinks; food supplements; herbal supplements; homeopathic supplements; meal replacement and dietary supplement drink mixes; nutritional supplements; mineral supplements; powdered nutritional supplement drink mix; vitamin supplements; mineral nutritional supplements; nutritionally fortified beverages; nutritionally fortified water; nutritional energy bars for use as a meal substitute; nutritional shakes for use as a meal substitute in Class 5; and preparations for making beverages, namely, fruit drinks and soft drinks; powders used in the preparation of isotonic sports drinks and sports beverages; concentrates, syrups or powders used in preparation of drinks

and soft drinks; fruit concentrates or purees used as ingredients of beverages; syrups for making beverages and soft drinks in Class 32. “Nutritional energy bars for use as a meal substitute” in Class 5 are identical to the goods sold by Opposer and may be purchased for the same reasons and consumed by the same persons on the same occasions as in the case of Opposer’s BALANCE products.

5. The mark Applicant seeks to register, BALANCE BIO3 is confusingly similar to the BALANCE mark phonetically and in its spelling.

6. Registration of the BALANCE BIO3 mark by Applicant in connection with its goods is likely to cause confusion or mistake or deceive customers or potential customers with respect to Opposer and its BALANCE products in that purchasers or potential purchasers of Opposer’s goods, upon encountering applicant’s goods offered under the BALANCE BIO3 mark, will believe, and will be justified in believing, that the goods offered by Applicant under its confusing similar mark are in fact those of Opposer, or are related to or are associated with or sponsored by Opposer, thereby creating a likelihood of confusion, or mistake or deception.

7. Any defects, inadequacies or fault found with Applicant’s goods sold under the BALANCE BIO3 mark could, because of the similarity of the mark to Opposer’s BALANCE trademark, reflect upon Opposer and seriously injure the reputation that Opposer has established for the products that it offers under the BALANCE trademark.

8. The registration of Applicant’s mark BALANCE BIO3 will interfere with the use by Opposer of the BALANCE trademark.

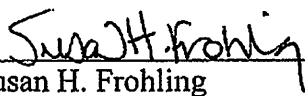
CLAIM II – DILUTION

9. Opposer repeats and realleges the allegations of Paragraphs 1 through 8 above as though full set forth herein.

10. The registration of Applicant's mark BALANCE BIO3 would dilute the distinctiveness of Opposer's mark, and, as such, would violate the provisions of Section 43(c) of the Trademark Act of 1946, and therefore is not entitled to registration.

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/268767 in Class 5, and requests the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,



Susan H. Frohling
Attorney for Opposer
Balance Bar Company
Three Lakes Drive
Northfield, IL 60093
Telephone: (847) 646-8657
Facsimile: (847) 646-5101

Date: February 12, 2009

Enclosure – Exhibit A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 12, 2009, a copy of the foregoing Notice of Opposition is being served first class mail to the Applicant's Attorney of Record at the following address:

Jeffrey A. Smith
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 Clarendon Blvd
Suite 1400
Arlington, VA 22201-3360

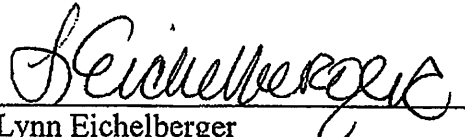
Signed: 
Lynn Eichelberger
Trademark Legal Assistant
Kraft Foods
E-mail: lynn.eichelberger@kraft.com
Telephone: (847) 646-3034
Facsimile: (847) 646-5101

EXHIBIT A

NEW

NEW
NUTRITION

NUTRITION ENERGY BAR / 10g Protein / 5g Fiber



BALANCE ORGANIC

/ apricot mango crisp NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

3101152
© 2011

NET WT 1.58 OZ (45g)

new!

©D

BALANCE[®]
BAR

100 calories

NUTRITION ENERGY SNACK BAR

NET WT 0.98 OZ (28g)

vanilla caramel crisp
NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

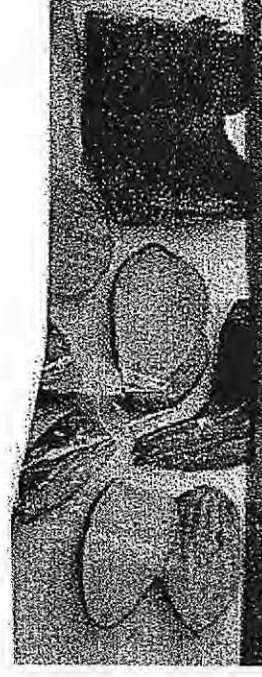
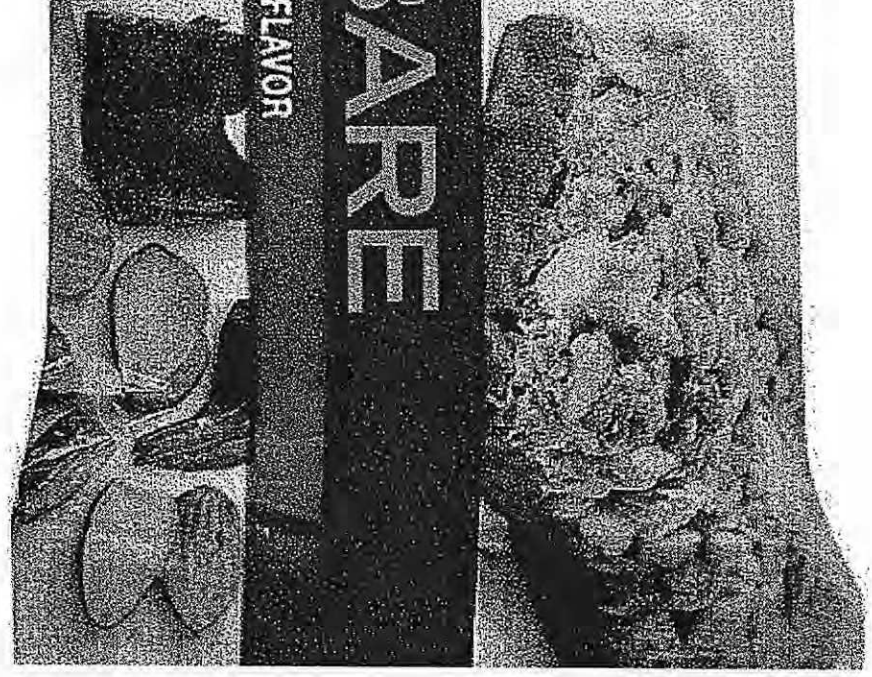


NUTRITION ENERGY BAR / 13g Protein

BALANCE BARE

/ Sweet & salty chocolate almond NATURAL FLAVOR

NET WT 1.76 OZ (50g)



NUTRITION ENERGY BAR / High Protein

BALANCE GOLD

/ caramel nut blast natural flavor with other natural flavor

NET WT 1.76 OZ (50g)

®

EXHIBIT E9



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91188840**Filing Date:** 02/12/2009**Status:** Terminated**Status Date:** 11/06/2009**General Contact Number:** 571-272-8500**Interlocutory Attorney:** ANDREW P BAXLEY

Defendant

Name: Corporacion Industrial Alimenticia, S.A. de C.V.**Correspondence:** JEFFREY A. SMITHMILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD, STE 1400
ARLINGTON, VA 22201-3360
UNITED STATES**Serial #:** 77268774 [Application File](#)**Registration #:** 4268438**Application Status:** Registered**Mark:** BALANCE BIO 3 REDUCE

Plaintiff

Name: Balance Bar Company**Correspondence:** SUSAN H. FROHLINGBALANCE BAR COMPANY
THREE LAKES DRIVE
NORTHFIELD, IL 60093
UNITED STATES
trademark@kraft.com**Serial #:** 76194400 [Application File](#)**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 78416165 [Application File](#)**Registration #:** 3036771**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR**Serial #:** 77053653 [Application File](#)**Registration #:** 3436917**Application Status:** Registered**Mark:** BALANCE BARE**Serial #:** 75854595 [Application File](#)**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD

Prosecution History

Date

History Text

Due Date

8	11/06/2009	TERMINATED	
7	11/06/2009	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
6	03/25/2009	<u>CONSOLIDATION GRANTED</u>	
5	03/24/2009	<u>MOTION TO CONSOLIDATE</u>	
4	03/24/2009	<u>ANSWER</u>	
3	02/13/2009	PENDING, INSTITUTED	
2	02/13/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/25/2009
1	02/12/2009	<u>FILED AND FEE</u>	

Results as of 05/25/2014 02:13 PM

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ESTTA Tracking number: **ESTTA266245**Filing date: **02/12/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BALANCE BAR COMPANY		
Entity	Corporation	Citizenship	DELAWARE
Address	THREE LAKES DRIVE NORTHFIELD, IL 60093 UNITED STATES		

Correspondence information	SUSAN H. FROHLING TRADEMARK COUNSEL BALANCE BAR COMPANY THREE LAKES DRIVE NORTHFIELD, IL 60093 UNITED STATES trademark@kraft.com Phone:(847) 646-8657
----------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Applicant Information

Application No	77268774	Publication date	01/13/2009
Opposition Filing Date	02/12/2009	Opposition Period Ends	02/12/2009
Applicant	Corporaci3n Industrial Alimenticia, S.A. de C.V. Av. de la Industria S/N Colonia El Tr4bo Parque Industrial, CP54614 MEXICO		

Goods/Services Affected by Opposition


Class 005. Opposed goods and services in the class: Dietary supplements; dietary food supplements; dietary supplement drinks; food supplements; herbal supplements; homeopathic supplements; meal replacement and dietary supplement drink mixes; nutritional supplements; mineral supplements; powdered nutritional supplement drink mix; vitamin supplements; mineral nutritional supplements; nutritionally fortified beverages; nutritionally fortified water; nutritional energy bars for use as a meal substitute; nutritional shakes for use as a meal substitute


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority	NONE

		Date	
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	3036771	Application Date	05/10/2004
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		

Design Mark	BALANCE BARE
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	BALANCE GOLD		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Related Proceedings	Notice of Opposition filed on February 12, 2009 against the Applicant's mark BALANCE BIO3 under Application Serial No. 77/268767
Attachments	76194400#TMSN.gif (1 page)(bytes) 78416165#TMSN.jpeg (1 page)(bytes) 77053653#TMSN.jpeg (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) BALANCE BIO REDUCE Notice of Opposition.pdf (10 pages)(987651 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/SUSAN H. FROHLING/
Name	SUSAN H. FROHLING
Date	02/12/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Trademark Application Serial No. 77/268774

Filed: August 30, 2007

For the Mark: **BALANCE BIO3 REDUCE**

Balance Bar Company)
)
Opposer,)
)
v.)
)
Corporacion Industrial Alimenticia, S.A. de C.V.)
)
Applicant.)

NOTICE OF OPPOSITION

Opposer, Balance Bar Company, a Delaware corporation with a business address of Three Lakes Drive, Northfield, Illinois 60093, hereby opposes registration of the mark **BALANCE BIO3 REDUCE** that is the subject matter of Application Serial No. 77/268774, published in the *Official Gazette* of January 13, 2009, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

CLAIM I – SECTION 2(d)

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has engaged in the manufacture and sale of snack bar products throughout the United States sold under the **BALANCE** trademark.

2. By virtue of the excellence of Opposer's BALANCE products and extensive promotional activities and sales thereof, the BALANCE mark is a famous mark such that the public has come to identify the business and products denominated by the mark as those of Opposer.

3. Opposer is the owner of numerous registrations in the United States Patent and Trademark Office for the BALANCE trademark, including:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2745850	Protein based, nutrient-dense snack bars
BALANCE BAR	3036771	Protein based, nutrient-dense snack bars
BALANCE BARE	3436917	Protein based, nutrient-dense snack bars; and grain-based food bars also containing fruits and nuts
BALANCE GOLD	2636101	Snack bars

The registrations are valid and subsisting in the name of Balance Bar Company. Packaging images of the Opposer's BALANCE trademark are attached hereto as Exhibit A.

4. Applicant has filed an intent to use application to register the mark BALANCE BIO3 REDUCE for dietary supplements; dietary food supplements; dietary supplement drinks; food supplements; herbal supplements; homeopathic supplements; meal replacement and dietary supplement drink mixes; nutritional supplements; mineral supplements; powdered nutritional supplement drink mix; vitamin supplements; mineral nutritional supplements; nutritionally fortified beverages; nutritionally fortified water; nutritional energy bars for use as a meal substitute; nutritional shakes for use as a meal substitute in Class 5; and preparations for making beverages, namely, fruit drinks and soft drinks; powders used in the preparation of isotonic sports drinks and sports beverages; concentrates, syrups or powders used in preparation of drinks

and soft drinks; fruit concentrates or purees used as ingredients of beverages; syrups for making beverages and soft drinks in Class 32. "Nutritional energy bars for use as a meal substitute" in Class 5 are identical to the goods sold by Opposer and may be purchased for the same reasons and consumed by the same persons on the same occasions as in the case of Opposer's BALANCE products.

5. The mark Applicant seeks to register, BALANCE BIO3 REDUCE is confusingly similar to the BALANCE mark phonetically and in its spelling.

6. Registration of the BALANCE BIO3 REDUCE mark by Applicant in connection with its goods is likely to cause confusion or mistake or deceive customers or potential customers with respect to Opposer and its BALANCE products in that purchasers or potential purchasers of Opposer's goods, upon encountering applicant's goods offered under the BALANCE BIO3 REDUCE mark, will believe, and will be justified in believing, that the goods offered by Applicant under its confusing similar mark are in fact those of Opposer, or are related to or are associated with or sponsored by Opposer, thereby creating a likelihood of confusion, or mistake or deception.

7. Any defects, inadequacies or fault found with Applicant's goods sold under the BALANCE BIO3 REDUCE mark could, because of the similarity of the mark to Opposer's BALANCE trademark, reflect upon Opposer and seriously injure the reputation that Opposer has established for the products that it offers under the BALANCE trademark.

8. The registration of Applicant's mark BALANCE BIO3 REDUCE will interfere with the use by Opposer of the BALANCE trademark.

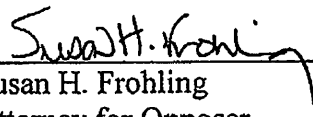
CLAIM II – DILUTION

9. Opposer repeats and realleges the allegations of Paragraphs 1 through 8 above as though full set forth herein.

10. The registration of Applicant's mark BALANCE BIO3 REDUCE would dilute the distinctiveness of Opposer's mark, and, as such, would violate the provisions of Section 43(c) of the Trademark Act of 1946, and therefore is not entitled to registration.

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/268774 in Class 5, and requests the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,



Susan H. Frohling
Attorney for Opposer
Balance Bar Company
Three Lakes Drive
Northfield, IL 60093
Telephone: (847) 646-8657
Facsimile: (847) 646-5101

Date: February 12, 2009

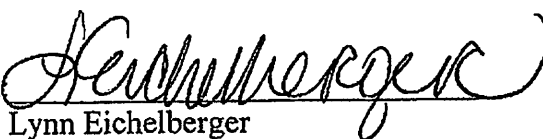
Enclosure – Exhibit A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 12, 2009, a copy of the foregoing Notice of Opposition is being served first class mail to the Applicant's Attorney of Record at the following address:

Jeffrey A. Smith
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 Clarendon Blvd
Suite 1400
Arlington, VA 22201-3360

Signed



Lynn Eichelberger
Trademark Legal Assistant
Kraft Foods
E-mail: lynn.eichelberger@kraft.com
Telephone: (847) 646-3034
Facsimile: (847) 646-5101

EXHIBIT A

NEW

THE
NEW
BRI

NUTRITION ENERGY BAR / 10g Protein / 5g Fiber



BALANCE ORGANIC

/ apricot mango crisp NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

© 2012
NEW 1.580Z(453)

new!

©20

BALANCE[®] BAR

100 calories

NUTRITION ENERGY SNACK BAR

NET WT 0.98 OZ (28g)

vanilla caramel crisp
NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

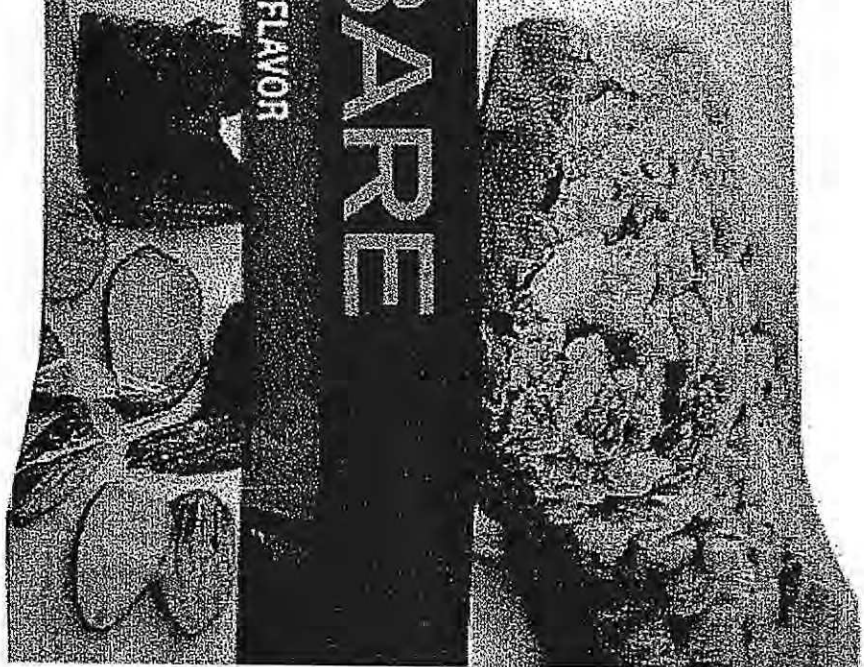


NUTRITION ENERGY BAR / 13g Protein

BALANCE BAR

/ Sweet & Salty Chocolate Almond Natural Flavor

NET WT 1.76 OZ (50g)



NUTRITION ENERGY BAR / High Protein

BALANCE GOLD

/caramel multi blast NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

NET WT 1.76 OZ (50g)

®

EXHIBIT E10



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Opposition

Number: 91188832**Status:** Terminated**Filing Date:** 02/12/2009**Status Date:** 04/20/2009**General Contact Number:** 571-272-8500**Interlocutory Attorney:** GEORGE POLOGEORGIS

Defendant

Name: PHARMAVITE LLC**Correspondence:** STANLEY W. SOKOLOFF

BLAKELY SOKOLOFF TAYLOR & ZAFMAN

12400 WILSHIRE BOULEVARD 7TH FLOOR

LOS ANGELES, CA 90025-1040

UNITED STATES

tm_filings@bstz.com, daniel_russell@bstz.com

Serial #: 77540338Application File**Application Status:** Abandoned - No Statement Of Use Filed**Mark:** EQUOL BALANCE

Plaintiff

Name: Balance Bar Company**Correspondence:** Susan H. Frohling

BALANCE BAR COMPANY

Three Lakes Drive

Northfield, IL 60093

UNITED STATES

sfrohling@Kraft.com

Serial #: 76194400Application File**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 78416165Application File**Registration #:** 3036771**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR**Serial #:** 77053653Application File**Registration #:** 3436917**Application Status:** Registered**Mark:** BALANCE BARE**Serial #:** 75854595Application File**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD

Prosecution History

#	Date	History Text	Due Date
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10	04/20/2009	TERMINATED	
9	04/20/2009	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
8	04/17/2009	<u>WITHDRAWAL OF OPPOSITION</u>	
7	04/15/2009	<u>RESPONSE DUE 30 DAYS (DUE DATE)</u>	05/15/2009
6	04/13/2009	<u>MOTION TO AMEND APPLICATION</u>	
5	03/17/2009	<u>EXTENSION OF TIME GRANTED</u>	
4	03/17/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
3	02/12/2009	PENDING, INSTITUTED	
2	02/12/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/24/2009
1	02/12/2009	<u>FILED AND FEE</u>	

Results as of 05/25/2014 02:13 PM

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ESTTA Tracking number: **ESTTA266250**

Filing date: **02/12/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	03/11/2009
Address	Three Lakes Drive Northfield, IL 60093 UNITED STATES
Correspondence information	Susan H. Frohling Trademark Counsel BALANCE BAR COMPANY Three Lakes Drive Northfield, IL 60093 UNITED STATES trademark@kraft.com Phone:(847) 646-8657

Applicant Information

Application No	77540338	Publication date	11/11/2008
Opposition Filing Date	02/12/2009	Opposition Period Ends	03/11/2009
Applicant	PHARMAVITE LLC P.O. Box 9606 Mission Hills, CA 913469606 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. Opposed goods and services in the class: DIETARY SUPPLEMENTS AND NUTRITIONAL BARS

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		

Design Mark	BALANCE
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars

U.S. Registration No.	3036771	Application Date	05/10/2004
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark	BALANCE BAR		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		

Design Mark	BALANCE BARE
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	BALANCE GOLD		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Attachments	76194400#TMSN.gif (1 page)(bytes) 78416165#TMSN.jpeg (1 page)(bytes) 77053653#TMSN.jpeg (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) EQUOL BALANCE Notice of Opposition.pdf (10 pages)(956684 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Susan H. Frohling/
Name	Susan H. Frohling

Date	02/12/2009
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Trademark Application Serial No. 77/540338

Filed: August 6, 2008

For the Mark: **EQUOL BALANCE**.

Balance Bar Company)	
)	
)	
Opposer,)	
)	
v.)	
)	
Pharmavite LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Balance Bar Company, a Delaware corporation with a business address of Three Lakes Drive, Northfield, Illinois 60093, hereby opposes registration of the mark EQUOL BALANCE that is the subject matter of Application Serial No. 77/540338, published in the *Official Gazette* of November 11, 2008, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

CLAIM I – SECTION 2(d)

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has engaged in the manufacture and sale of snack bar products throughout the United States sold under the BALANCE trademark.

2. By virtue of the excellence of Opposer's BALANCE products and extensive promotional activities and sales thereof, the BALANCE mark is a famous mark such that the public has come to identify the business and products denominated by the mark as those of Opposer.

3. Opposer is the owner of numerous registrations in the United States Patent and Trademark Office for the BALANCE trademark, including:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2745850	Protein based, nutrient-dense snack bars
BALANCE BAR	3036771	Protein based, nutrient-dense snack bars
BALANCE BARE	3436917	Protein based, nutrient-dense snack bars; and grain-based food bars also containing fruits and nuts
BALANCE GOLD	2636101	Snack bars

The registrations are valid and subsisting in the name of Balance Bar Company. Packaging images of the Opposer's BALANCE trademark are attached hereto as Exhibit A.

4. Applicant has filed an intent to use application to register the mark EQUOL BALANCE for dietary supplements and nutritional bars in Class 5. "Nutritional bars" are identical to the goods sold by Opposer and may be purchased for the same reasons and consumed by the same persons on the same occasions as in the case of Opposer's BALANCE products.

5. The mark Applicant seeks to register, EQUOL BALANCE is confusingly similar to the BALANCE mark phonetically and in its spelling.

6. Registration of the EQUOL BALANCE mark by Applicant in connection with its goods is likely to cause confusion or mistake or deceive customers or potential customers with respect to Opposer and its BALANCE products in that purchasers or potential purchasers of Opposer's goods, upon encountering applicant's goods offered under the EQUOL BALANCE mark, will believe, and will be justified in believing, that the goods offered by Applicant under its confusing similar mark are in fact those of Opposer, or are related to or are associated with or sponsored by Opposer, thereby creating a likelihood of confusion, or mistake or deception.

7. Any defects, inadequacies or fault found with Applicant's goods sold under the EQUOL BALANCE mark could, because of the similarity of the mark to Opposer's BALANCE trademark, reflect upon Opposer and seriously injure the reputation that Opposer has established for the products that it offers under the BALANCE trademark.

8. The registration of Applicant's mark EQUOL BALANCE will interfere with the use by Opposer of the BALANCE trademark.

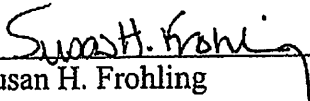
CLAIM II – DILUTION

9. Opposer repeats and realleges the allegations of Paragraphs 1 through 8 above as though full set forth herein.

10. The registration of Applicant's mark EQUOL BALANCE would dilute the distinctiveness of Opposer's mark, and, as such, would violate the provisions of Section 43(c) of the Trademark Act of 1946, and therefore is not entitled to registration.

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/540338 in Class 5, and requests the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,



Susan H. Frohling
Attorney for Opposer
Balance Bar Company
Three Lakes Drive
Northfield, IL 60093
Telephone: (847) 646-8657
Facsimile: (847) 646-5101

Date: February 12, 2009

Enclosure – Exhibit A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 12, 2009, a copy of the foregoing Notice of Opposition is being served first class mail to the Applicant's Attorney of Record at the following address:

Stanley W. Sokoloff
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 Wilshire Boulevard
7th Floor
Los Angeles, CA 90025-1040

Signed: 
Lynn Eichelberger
Trademark Legal Assistant
Kraft Foods
E-mail: lynn.eichelberger@kraft.com
Telephone: (847) 646-3034
Facsimile: (847) 646-5101

EXHIBIT A

NEW

THE
NEW

NUTRITION ENERGY BAR / 10g Protein / 5g Fiber



BALANCE ORGANIC

/ apricot mango crisp natural flavor with other natural flavor

7910 1132
© 2011 NEW
NET WT 1.58 OZ (45g)

new!

BALANCE[®] BAR

100 calories

NUTRITION ENERGY SNACK BAR

vanilla caramel crisp

NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

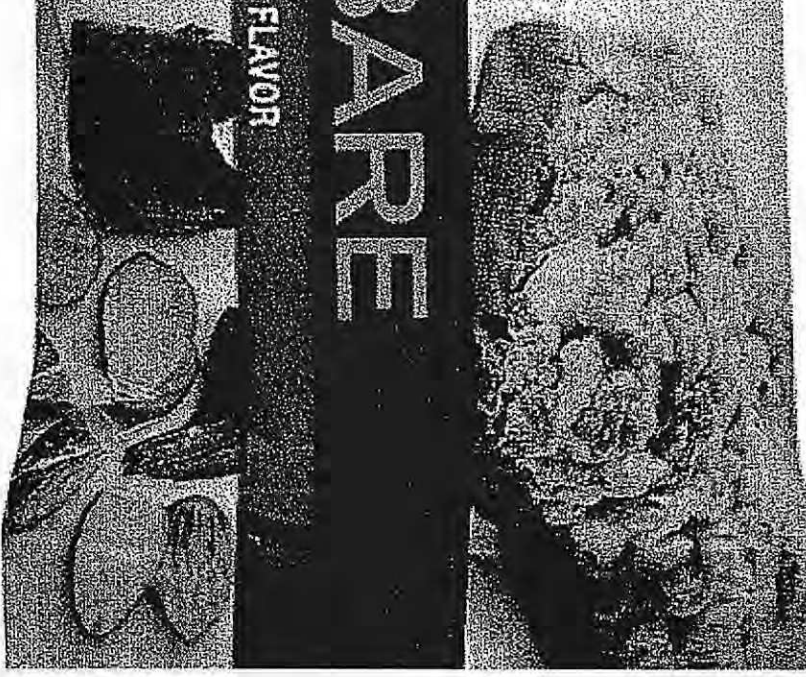
NET WT 0.938 OZ (26g)

NUTRITION ENERGY BAR / 13g Protein

BALANCE BARE

/ Sweet & salty chocolate almond NATURAL FLAVOR

NET WT 1.76 OZ (50g)



NUTRITION ENERGY BAR / High Protein

BALANCE GOLD

/ Certified Natural Flavors with Other Natural Flavors

NET WT 1.76 OZ (50g)

®

EXHIBIT E11



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TTABVue. Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91192572**Status:** Terminated**Filing Date:** 11/06/2009**Status Date:** 06/23/2010**General Contact Number:** 571-272-8500**Interlocutory Attorney:** ELIZABETH A DUNN

Defendant

Name: Mind Mine**Correspondence:** ERIC M. NIELSEN
SNELL & WILMER L.L.P.
ONE ARIZONA CENTER
PHOENIX, AZ 85004-2202
UNITED STATES
enielsen@swlaw.com**Serial #:** 77697640 Application File**Registration #:** 3823699**Application Status:** Registered**Mark:** THYRO-BALANCE

Plaintiff

Name: Balance Bar Company**Correspondence:** DAVID I. GREENBAUM
EDWARDS ANGELL PALMER & DODGE LLP
750 LEXINGTON AVENUE
NEW YORK, NY 10022
UNITED STATES
DGreenbaum@eapdlaw.com, rfraley@swlaw.com**Serial #:** 76194400 Application File**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 75321186 Application File**Registration #:** 2659753**Application Status:** Renewed**Mark:** BALANCE BAR**Serial #:** 75854595 Application File**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD

Prosecution History

#	Date	History Text	Due Date
17	06/23/2010	TERMINATED	
16	06/23/2010	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	

<u>15</u>	06/14/2010	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>14</u>	06/08/2010	<u>RESPONSE DUE 30 DAYS (DUE DATE)</u>	07/08/2010
<u>13</u>	05/11/2010	<u>MOTION TO AMEND APPLICATION</u>	
<u>12</u>	04/15/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>11</u>	04/15/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>10</u>	03/25/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>9</u>	03/19/2010	<u>STIPULATION TO REOPEN DISCOVERY</u>	
<u>8</u>	02/12/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>7</u>	02/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>6</u>	12/15/2009	<u>EXTENSION OF TIME GRANTED</u>	
<u>5</u>	12/15/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>4</u>	12/03/2009	<u>CHANGE OF CORRESPONDENCE ADDRESS</u>	
<u>3</u>	11/06/2009	PENDING, INSTITUTED	
<u>2</u>	11/06/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	12/16/2009
<u>1</u>	11/06/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA315530**Filing date: **11/06/2009**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	11/18/2009
Address	Three Lakes Drive Northfield, IL 60093 UNITED STATES
Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius LLP 1111 Pennsylvania Ave., NW; Attn: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, kbutcher@morganlewis.com, kaltoff@morganlewis.com Phone:202-739-3000

Applicant Information

Application No	77697640	Publication date	07/21/2009
Opposition Filing Date	11/06/2009	Opposition Period Ends	11/18/2009
Applicant	Mind Mine 4142 E. 5th Street Tucson, AZ 85711 UNITED STATES		

Goods/Services Affected by Opposition


<p>Class 005. First Use: 2000/04/01 First Use In Commerce: 2000/04/01 All goods and services in the class are opposed, namely: Animal feed additive for use as a nutritional supplement for medical purposes; Animal feed supplements; Bee pollen for use as a dietary food supplement; Biscuits, bread, bread rolls, cakes, cereal products, confectionery, crackers, noodles, fish sauce, relish, sauces, cereal-based snack-foods and prepared dietary items all of which are gluten -free to accommodate special medical and health conditions; Calcium montmorillonite clay for therapeutic purposes used to enhance the production of enzymes in living beings or as a mineral supplement; Calcium supplements; Dietary and nutritional supplements; Dietary and nutritionally fortified food products adapted for medical use; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary drink mix for use as a meal replacement; Dietary fiber as an additive for food products; Dietary food supplements; Dietary pet supplements in the form of pet treats; Dietary supplemental drinks; Dietary supplements; Dietary supplements for animals; Dietary supplements for controlling cholesterol; Dietary supplements for human consumption; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix; Feed supplements for dogs, cats, and household pets; Fish, pickles, preserved olives and dietary foods and food-items that are gluten-free to accommodate special medical and health conditions; Food supplements; Food supplements, namely, anti-oxidants; Foods for individuals</p>

with special dietary requirements necessitated by medical treatments; Ground flaxseed fiber for use as a dietary supplement; Herbal supplements; Homeopathic supplements; Lecithin for use as a dietary supplement; Liquid nutritional supplement; Meal replacement and dietary supplement drink mixes; Mineral food supplements; Mineral nutritional supplements; Mineral supplements; Natural dietary supplements for treatment of claustrophobia; Natural herbal supplements; Natural supplements for treating candida; Natural supplements for treating depression and anxiety; Natural supplements for treating erectile dysfunction; Non-medicated additives for animal feed for use as nutritional supplements; Nutraceuticals for use as a dietary supplement; Nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; Nutritional supplement in the nature of a nutrient-dense, protein-based drink mix; Nutritional supplements; Nutritional supplements in lotion form sold as a component of nutritional skin care products; Powdered fruit-flavored dietary supplement drink mix; Powdered nutritional supplement drink mix; Protein supplements; Soy protein for use as a nutritional supplement in various powdered and ready-to-drink beverages; Vitamin and mineral supplements; Vitamin supplement in tablet form for use in making an effervescent beverage when added to water; Vitamin supplements; Vitamins and dietary food supplements for animals; Wheat for use as a dietary supplement; Zinc supplement lozenges

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements		

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	<p style="text-align: center;">BALANCE GOLD</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Attachments	76194400#TMSN.gif (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) THYRO-BALANCE Notice of Opposition.pdf (5 pages)(18814 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kristin H. Altoff/
Name	Kristin H. Altoff
Date	11/06/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Trademark Application Serial No. 77/697,640

Filed: March 24, 2009

For the Mark: THYRO-BALANCE

_____)
Balance Bar Company,)
)
Opposer,)
)
v.)
)
Mind Mine,)
)
Applicant.)
_____)

NOTICE OF OPPOSITION

Opposer, Balance Bar Company, a Delaware corporation with a business address of Three Lakes Drive, Northfield, Illinois 60093 (“Opposer”), believes it will be damaged by registration in Class 5 of the designation THYRO-BALANCE that is the subject matter of Application Serial No. 77/697,640, filed by Mind Mine (“Applicant”). Opposer hereby opposes the same under the provisions of Sections 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d), 1063 and 1125(c) and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

1. For many years, and since long prior to March 24, 2009 (the filing date of the application for the THYRO-BALANCE designation) and April 1, 2000 (the claimed first use date), Opposer has engaged in the manufacture and sale of nutritional food supplements and

snack bar products throughout the United States advertised and sold under the BALANCE trademark.

2. By virtue of the excellence of Opposer's products bearing the BALANCE trademark and as a result of Opposer's extensive promotional activities and sales thereof, the BALANCE trademark is famous, and the public has come to identify the business and products denominated by the BALANCE trademark as being associated exclusively associated with Opposer.

3. In addition to Opposer's long-standing common law rights in and to the BALANCE trademark, Opposer owns numerous registrations issued by the United States Patent and Trademark Office for the BALANCE trademark, including, among others, the following:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2,745,850	Protein based, nutrient-dense snack bars
BALANCE BAR	2,659,753	Nutritional food supplements
BALANCE GOLD	2,636,101	Snack bars

4. The registrations referenced above are valid and subsisting in the name of Balance Bar Company, are in full force and effect, and constitute *prima facie* and/or conclusive evidence of Opposer's exclusive right to use the mark in commerce in connection with the goods specified in the registrations.

5. The registrations referenced above are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations.

6. On March 24, 2009, Applicant filed use-based application under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), to register the designation THYRO-BALANCE (Serial No. 77/697,640).

7. The application for THYRO-BALANCE (Serial No. 77/697,640) currently covers a wide range of goods in Class 5.

8. Applicant's THYRO-BALANCE designation was published for opposition in the *Official Gazette* on July 21, 2009.

9. The Trademark Trial and Appeal Board extended the opposition period for the THYRO-BALANCE designation by granting Opposer's timely requests for an extension. The opposition period for Application Serial No. 77/697,640 is currently set to expire on November 18, 2009. Opposer, therefore, timely files this opposition.

10. Through its longstanding and continuous use of the BALANCE trademark, Opposer has acquired exclusive rights in the BALANCE trademark that substantially predate any rights upon which Applicant may rely.

11. Opposer's BALANCE trademark is famous and became famous before the filing date or any use of the THYRO-BALANCE designation by Applicant.

12. The "BALANCE" portion of Applicant's THYRO-BALANCE designation is identical to that Opposer's BALANCE trademark.

13. Opposer believes it will be damaged by registration of Applicant's THYRO-BALANCE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the BALANCE trademark used by Opposer in the United States as to be likely, when used on or in connection with the goods identified in the THYRO-BALANCE application, to cause confusion, mistake or to deceive consumers, with

consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Opposer believes it will be damaged by registration of the THYRO-BALANCE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the THYRO-BALANCE designation is likely to dilute the distinctive quality of Opposer's famous BALANCE trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/697,640 and requests the opposition be sustained and that registration to Applicant be refused.

Dated: November 6, 2009

Respectfully submitted,

By: /s/ Kristin H. Altoff
Karen A. Butcher
Kristin H. Altoff
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 739-3000
Fax: (202) 739-3001

Attorneys for Opposer
Balance Bar Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 6, 2009, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Correspondent of Record at the following address:

JAMES WILSON
MIND MINE
P. O. BOX 26021
TUCSON, AZ 85726

/s/ Kristin H. Altoff

EXHIBIT E12



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TTABVUE, Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91193619

Status: Terminated

General Contact Number: 571-272-8500

Interlocutory Attorney: GEORGE POLOGEORGIS

Filing Date: 02/01/2010

Status Date: 08/13/2010

Defendant

Name: Tiens Group Co., Ltd.Correspondence: MICHAEL MAOZ

KRAMER LEVIN NAFTALIS & FRANKEL LLP

1177 AVENUE OF THE AMERICAS

NEW YORK, NY 10036-2714

UNITED STATES

kltrademark@kramerlevin.com, mmaoz@kramerlevin.com

Serial #: 77572513Application File

Application Status: Abandoned - After Inter-Partes Decision

Mark: VITAL BALANCE

Plaintiff

Name: BALANCE BAR COMPANYCorrespondence: DAVID I GREENBAUM

EDWARDS ANGELL PALMER & DODGE LLP

FDR STATION , PO BOX 130

NEW YORK, NY 10150

UNITED STATES

dgreenbaum@eapdlaw.com

Serial #: 76194400Application FileRegistration #: 2745850

Application Status: Renewed

Mark: BALANCE

Serial #: 75321186Application FileRegistration #: 2659753

Application Status: Renewed

Mark: BALANCE BAR

Serial #: 75854595Application FileRegistration #: 2636101

Application Status: Renewed

Mark: BALANCE GOLD

Prosecution History

Date History Text

Due Date

17 08/13/2010 TERMINATED

16 08/13/2010 BD'S DECISION: DISMISSED W/O PREJUDICE

<u>15</u>	08/09/2010	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>14</u>	08/09/2010	<u>WITHDRAWAL OF APPLICATION</u>	
<u>13</u>	07/09/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>12</u>	07/09/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>11</u>	06/11/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>10</u>	06/11/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>9</u>	05/12/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>8</u>	05/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>7</u>	04/12/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>6</u>	04/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>5</u>	03/15/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>4</u>	03/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>3</u>	02/01/2010	PENDING, INSTITUTED	
<u>2</u>	02/01/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/13/2010
<u>1</u>	02/01/2010	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA329918**

Filing date: **02/01/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BALANCE BAR COMPANY
Granted to Date of previous extension	01/31/2010
Address	115 Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES
Attorney information	David I. Greenbaum Edwards Angell Palmer & Dodge LLP FDR Station P.O. Box 130 New York, NY 10150 UNITED STATES trademark@eapdlaw.com, dgreenbaum@eapdlaw.com Phone:(212) 912-2727

Applicant Information

Application No	77572513	Publication date	08/04/2009
Opposition Filing Date	02/01/2010	Opposition Period Ends	01/31/2010
Applicant	Tiens Group Co., Ltd. No. 6, Yuanquan Road, Wuqing Dev. Area New-Tech Industrial Park Tianjin, 301700 CHINA		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: nutritional supplements, namely, energy bars, health shakes, nutritional drinks, vitamins and minerals for supplementing nutritional dietary requirements
Class 032. All goods and services in the class are opposed, namely: non-alcoholic beverages, namely, energy drinks, sports drinks, fruit juices, fruit extracts used in the preparation of antioxidant health beverages

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
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Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements		

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Related Proceedings	Opposition versus App. No. 77/72,505.
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Attachments	76194400#TMSN.gif (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) Notice of Opposition - VITAL BALANCE and Design.pdf (6 pages)(82998 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dig/
Name	David I. Greenbaum
Date	02/01/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:
Trademark Application Serial No. 77/572,513
Filed: September 17, 2008
For the Mark: VITAL BALANCE and Design
Published in the Official Gazette on August 4, 2009

-----	X	
	§	
Balance Bar Company,	§	
	§	
Opposer,	§	
	§	
-against-	§	Opposition No. _____
	§	
Tiens Group Co., Ltd.,	§	
	§	
Applicant.	§	
	§	
-----	X	

To: Trademark Trial and Appeal Board

NOTICE OF OPPOSITION

Opposer, Balance Bar Company, a Delaware corporation with a business address of 115 Stevens Avenue, Suite 202, Valhalla, NY 10595 (“Opposer”), believes it will be damaged by registration of the designation VITAL BALANCE and Design in Classes 5 and 32, which is the subject matter of Application Serial No. 77/572,513, filed on the basis of intent-to-use by Tiens Group Co., Ltd. (“Applicant”).

As grounds for opposition, Opposer, by its attorneys, Edwards Angell Palmer & Dodge, LLP, respectfully alleges:

1. For many years, and since long prior to the September 17, 2008 filing date of the application for the VITAL BALANCE and Design designation, Opposer has engaged in the manufacture and sale of nutritional food supplements and snack bar products throughout the United States, advertised and sold under the BALANCE trademark and BALANCE-formative trademarks. The BALANCE trademark has become distinctive of Opposer's goods and represents substantial goodwill of Opposer.

2. By virtue of the excellence of Opposer's products bearing the BALANCE trademark and as a result of Opposer's extensive promotional activities and sales thereof, the BALANCE trademark is famous, and the public has come to identify the business and products denominated by the BALANCE trademark as being associated exclusively associated with Opposer.

3. In addition to Opposer's long-standing common law rights in and to the BALANCE trademark and formatives thereof, Opposer owns numerous registrations issued by the United States Patent and Trademark Office for the BALANCE trademark, including, among others, the following:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2,745,850	Protein based, nutrient-dense snack bars
BALANCE BAR	2,659,753	Nutritional food supplements
BALANCE GOLD	2,636,101	Snack bars

4. The registrations referenced above are valid and subsisting in the name of Balance Bar Company, are in full force and effect, and constitute evidence of

Opposer's exclusive right to use the BALANCE and formatives thereof in commerce in connection with the goods specified in the registrations.

5. The registrations referenced above are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations.

6. Upon information and belief, Applicant is a company organized in China, located at No. 6, Yuanquan Road, Wuqing Dev. Area New-Tech Industrial Park, Tianjin 301700, China.

6. On September 17, 2008, Applicant filed intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), to register the designation VITAL BALANCE and Design (Serial No. 77/572,513).

7. The application for VITAL BALANCE and Design (Serial No. 77/572,513) covers a wide range of goods in Classes 5 and 32, including “energy bars” and other related goods.

8. Applicant's VITAL BALANCE and Design designation was published for opposition in the *Official Gazette* on August 4, 2009.

9. Through its longstanding and continuous use of the BALANCE trademark, Opposer has acquired exclusive rights in the BALANCE trademark that substantially predate any rights upon which Applicant may rely.

10. Opposer's BALANCE trademark is famous and became famous before the filing date or any use of the VITAL BALANCE and Design designation by Applicant.

11. The "BALANCE" portion of Applicant's VITAL BALANCE and Design designation is identical to that Opposer's BALANCE trademark.

12. The goods set forth in the Application are alternatively identical or relate to the goods on which Opposer uses its BALANCE mark.

13. Opposer believes it will be damaged by registration of Applicant's VITAL BALANCE and Design designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the BALANCE trademark used by Opposer in the United States as to be likely, when used on or in connection with the goods identified in the VITAL BALANCE and Design application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Opposer believes it will be damaged by registration of the VITAL BALANCE and Design designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the VITAL BALANCE and Design designation is likely to dilute the distinctive quality of Opposer's famous BALANCE trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

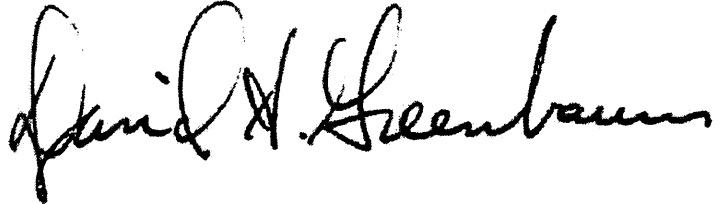
WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/572,513 and requests the opposition be sustained and that registration to Applicant be refused.

Please charge our Deposit Account No. 041105 in the amount of \$600.00 for the opposition fee.

Dated: New York, New York
February 1, 2010

Respectfully submitted,

EDWARDS ANGELL PALMER & DODGE, LLP

A handwritten signature in black ink, reading "David I. Greenbaum". The signature is fluid and cursive, with the first name "David" and last name "Greenbaum" clearly legible.

By _____
David I. Greenbaum

750 Lexington Avenue
New York, New York 10022
(212) 308-4411
Attorney for Opposer
Opposer's Ref: 307569.4064

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 1, 2010, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Correspondent of Record at the following address:

MICHAEL MAOZ
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2714

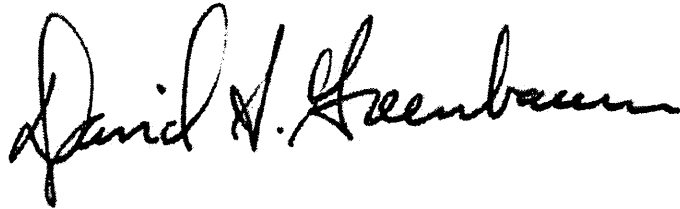
A handwritten signature in black ink, reading "David N. Greenbaum". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

EXHIBIT E13



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91193620**Status:** Terminated**Filing Date:** 02/01/2010**Status Date:** 08/13/2010**General Contact Number:** 571-272-8500**Interlocutory Attorney:** ANN LINNEHAN

Defendant

Name: Tiens Group Co., Ltd.**Correspondence:** MICHAEL MAOZ

KRAMER LEVIN NAFTALIS & FRANKEL LLP

1177 AVENUE OF THE AMERICAS

NEW YORK, NY 10036-2714

UNITED STATES

kltrademark@kramerlevin.com, mmaoz@kramerlevin.com

Serial #: 77572505Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** VITAL BALANCE

Plaintiff

Name: BALANCE BAR COMPANY**Correspondence:** David I. Greenbaum

Edwards Angell Palmer & Dodge LLP

FDR Station P.O. Box 130

New York, NY 10150

UNITED STATES

dgreenbaum@eapdlaw.com

Serial #: 76194400Application File**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 75321186Application File**Registration #:** 2659753**Application Status:** Renewed**Mark:** BALANCE BAR**Serial #:** 75854595Application File**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD

Prosecution History

#	Date	History Text	Due Date
17	08/13/2010	TERMINATED	
16	08/13/2010	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	

<u>15</u>	08/09/2010	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>14</u>	08/09/2010	<u>WITHDRAWAL OF APPLICATION</u>	
<u>13</u>	07/09/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>12</u>	07/09/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>11</u>	06/11/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>10</u>	06/11/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>9</u>	05/12/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>8</u>	05/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>7</u>	04/12/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>6</u>	04/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>5</u>	03/15/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>4</u>	03/12/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>3</u>	02/01/2010	PENDING, INSTITUTED	
<u>2</u>	02/01/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/13/2010
<u>1</u>	02/01/2010	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA329920**Filing date: **02/01/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BALANCE BAR COMPANY
Granted to Date of previous extension	02/07/2010
Address	115 Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES
Attorney information	David I. Greenbaum Edwards Angell Palmer & Dodge LLP FDR Station P.O. Box 130 New York, NY 10150 UNITED STATES trademark@eapdlaw.com, dgreenbaum@eapdlaw.com Phone: (212) 912-2977

Applicant Information

Application No	77572505	Publication date	08/11/2009
Opposition Filing Date	02/01/2010	Opposition Period Ends	02/07/2010
Applicant	Tiens Group Co., Ltd. No. 6, Yuanquan Road, Wuqing Dev. Area New-Tech Industrial Park Tianjin, 301700 CHINA		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: nutritional supplements, namely, energy bars, health shakes, nutritional drinks, vitamins and minerals for supplementing nutritional dietary requirements
Class 032. All goods and services in the class are opposed, namely: non-alcoholic beverages, namely, energy drinks, sports drinks, fruit juices, fruit extracts used in the preparation of antioxidant health beverages

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
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Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark	<p style="text-align: center;">BALANCE</p>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements		

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	<p style="text-align: center;">BALANCE GOLD</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Related Proceedings	Opposition versus App. No. 77/572,513
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Attachments	76194400#TMSN.gif (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) Notice of Opposition - VITAL BALANCE.pdf (6 pages)(181119 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dig/
Name	David I. Greenbaum
Date	02/01/2010

In the Matter of:
Trademark Application Serial No. 77/572,505
Filed: September 17, 2008
For the Mark: VITAL BALANCE
Published in the Official Gazette on August 11, 2009

-----X	
	§
Balance Bar Company,	§
	§
Opposer,	§
	§
-against-	§
	§
Tiens Group Co., Ltd.,	§
	§
Applicant.	§
	§
-----X	

NOTICE OF OPPOSITION

As grounds for opposition, Opposer, by its attorneys, Edwards Angell Palmer & Dodge, LLP, respectfully alleges:

1. For many years, and since long prior to the September 17, 2008 filing date of the application for the VITAL BALANCE designation, Opposer has engaged in the manufacture and sale of nutritional food supplements and snack bar products throughout the United States, advertised and sold under the BALANCE trademark and BALANCE-formative trademarks. The BALANCE trademark has become distinctive of Opposer's goods and represents substantial goodwill of Opposer.

2. By virtue of the excellence of Opposer's products bearing the BALANCE trademark and as a result of Opposer's extensive promotional activities and sales thereof, the BALANCE trademark is famous, and the public has come to identify the business and products denominated by the BALANCE trademark as being associated exclusively associated with Opposer.

3. In addition to Opposer's long-standing common law rights in and to the BALANCE trademark and formatives thereof, Opposer owns numerous registrations issued by the United States Patent and Trademark Office for the BALANCE trademark, including, among others, the following:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2,745,850	Protein based, nutrient-dense snack bars
BALANCE BAR	2,659,753	Nutritional food supplements
BALANCE GOLD	2,636,101	Snack bars

4. The registrations referenced above are valid and subsisting in the name of Balance Bar Company, are in full force and effect, and constitute evidence of

Opposer's exclusive right to use the BALANCE and formatives thereof in commerce in connection with the goods specified in the registrations.

5. The registrations referenced above are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations.

6. Upon information and belief, Applicant is a company organized in China, located at No. 6, Yuanquan Road, Wuqing Dev. Area New-Tech Industrial Park, Tianjin 301700, China.

6. On September 17, 2008, Applicant filed intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), to register the designation VITAL BALANCE (Serial No. 77/572,505).

7. The application for VITAL BALANCE (Serial No. 77/572,505) covers a wide range of goods in Classes 5 and 32, including “energy bars” and other related goods.

8. Applicant's VITAL BALANCE designation was published for opposition in the *Official Gazette* on August 11, 2009.

9. Through its longstanding and continuous use of the BALANCE trademark, Opposer has acquired exclusive rights in the BALANCE trademark that substantially predate any rights upon which Applicant may rely.

10. Opposer's BALANCE trademark is famous and became famous before the filing date or any use of the VITAL BALANCE designation by Applicant.

11. The "BALANCE" portion of Applicant's VITAL BALANCE designation is identical to that Opposer's BALANCE trademark.

12. The goods set forth in the Application are alternatively identical or relate to the goods on which Opposer uses its BALANCE mark.

13. Opposer believes it will be damaged by registration of Applicant's VITAL BALANCE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the BALANCE trademark used by Opposer in the United States as to be likely, when used on or in connection with the goods identified in the VITAL BALANCE application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Opposer believes it will be damaged by registration of the VITAL BALANCE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the VITAL BALANCE designation is likely to dilute the distinctive quality of Opposer's famous BALANCE trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

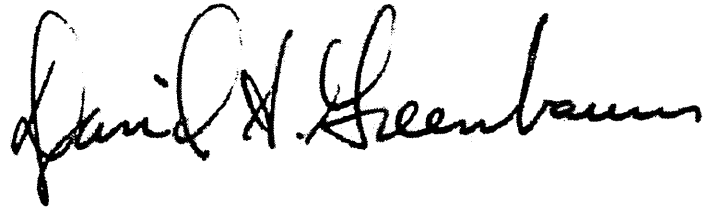
WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/572,505 and requests the opposition be sustained and that registration to Applicant be refused.

Please charge our Deposit Account No. 041105 in the amount of \$600.00 for the opposition fee.

Dated: New York, New York
February 1, 2010

Respectfully submitted,

EDWARDS ANGELL PALMER & DODGE, LLP

A handwritten signature in black ink, appearing to read "David I. Greenbaum", written over a horizontal line.

By _____
David I. Greenbaum

750 Lexington Avenue
New York, New York 10022
(212) 308-4411
Attorney for Opposer
Opposer's Ref: 307569.4065

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 1, 2010, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Correspondent of Record at the following address:

MICHAEL MAOZ
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2714

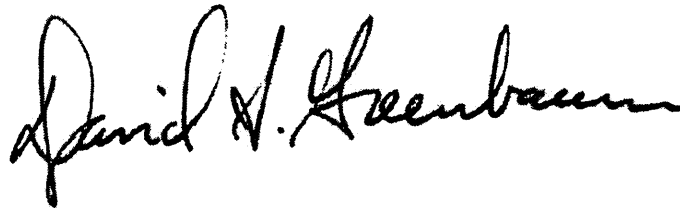


EXHIBIT E14



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.6

Opposition

Number: 91197149**Status:** Terminated**General Contact Number:** 571-272-8500**Interlocutory Attorney:** CHERYL A BUTLER**Filing Date:** 10/25/2010**Status Date:** 03/24/2011

Defendant

Name: Lighterlife UK Limited**Correspondence:** JEFFREY H GREGERLOWE HAUPTMAN & BERNER LLP
1700 DIAGONAL RD STE 300
ALEXANDRIA, VA 22314-2866
UNITED STATES
jhgreger@ipfirm.com**Serial #:** 78816226 Application File**Application Status:** Registered**Registration #:** 3953476**Mark:** LIGHTER LIFE LIFE IN BALANCE

Plaintiff

Name: Balance Bar Company**Correspondence:** DAVID I GREENBAUMEDWARDS ANGELL PALMER & DODGE LLP
PO BOX 130 FDR STATION
NEW YORK, NY 10150-0130
UNITED STATES
dgreenbaum@eapdlaw.com**Serial #:** 76194400 Application File**Application Status:** Renewed**Registration #:** 2745850**Mark:** BALANCE**Serial #:** 75321186 Application File**Application Status:** Renewed**Registration #:** 2659753**Mark:** BALANCE BAR**Serial #:** 75854595 Application File**Application Status:** Renewed**Registration #:** 2636101**Mark:** BALANCE GOLD**Serial #:** 85099089 Application File**Application Status:** Registered**Registration #:** 3937988**Mark:** BALANCE

Prosecution History

Date History Text

Due Date

13	03/24/2011	TERMINATED	
12	03/24/2011	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
11	03/07/2011	<u>WITHDRAWAL OF OPPOSITION</u>	
10	03/07/2011	<u>MOTION TO AMEND APPLICATION</u>	
9	02/04/2011	<u>SUSPENDED</u>	
8	02/04/2011	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
7	01/05/2011	<u>EXTENSION OF TIME GRANTED</u>	
6	01/05/2011	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
5	12/06/2010	<u>EXTENSION OF TIME GRANTED</u>	
4	12/06/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
3	10/28/2010	PENDING, INSTITUTED	
2	10/28/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	12/07/2010
1	10/25/2010	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA375052**

Filing date: **10/25/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	10/24/2010
Address	115 Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES
Correspondence information	David I. Greenbuam Edwards Angell Palmer & Dodge LLP P.O. Box 130 F.D.R. Station New York, NY 10150-0130 UNITED STATES trademark@eapdlaw.com Phone:212-912-2977

Applicant Information

Application No	78816226	Publication date	04/27/2010
Opposition Filing Date	10/25/2010	Opposition Period Ends	10/24/2010
International Registration No.	NONE	International Registration Date	NONE
Applicant	Lighterlife UK Limited Cavendish House Parkway, Harlow Business Centre; Harlow, CM19 5QF UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 005. All goods and services in the class are opposed, namely: Goods limited for sale to members of the Trademark Owner in conjunction with weight reduction counselling services of the Trademark Owner, namely, dietetic substances adapted for medical use, namely, meal replacement bars, meal replacement powders to be mixed with water or milk; food for babies; balms for medical purposes, namely, analgesic balms and medicated lip balms; pills for pharmaceutical purposes, namely, diet pills and sleeping pills; medicines for human purposes, namely, medicines for the treatment of obesity, meal replacement bars, meal replacement powders mixed with water or milk and food supplements; nutritional cereal bars for use as a meal substitute containing vegetables, fiber, and milk; meal replacement drinks; food and edible preparations, namely, meal replacement bars, meal replacement powder mixes, nutritional food supplements in the nature of a nutrient dense, protein based drink mix for use as a meal replacement; preparations for making fibre enhancement drinks and protein enhancement drink for use as a meal replacement or nutritional supplement</p>
<p>Class 029. All goods and services in the class are opposed, namely: Goods limited for sale members of the</p>

Trademark Owner in conjunction with weight reduction counselling services of the Trademark Owner, namely, meat, fish, poultry and game; meat extracts; preserved, dried or cooked fruits and vegetables; jellies, jams, and fruit sauces, namely, applesauce and cranberry sauce; eggs, milk and milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats; dried milk-based products, namely, skimmed milk, vitamin and protein based dry powder for use as a food additive; milk based products for foods, namely, milk powders for nutritional purposes and soy based food bars; milk based beverages containing coffee or fruit juice; jelly and jelly-based products, namely, flavoured jam and jelly, unflavoured and unsweetened gelatins; and vegetable bouillon; peanut bars in the nature of nut based snack bars; preparations for making bouillon


Class 030.

All goods and services in the class are opposed, namely: Goods limited for sale to members of the Trademark Owner in conjunction with weight reduction counselling services of the Trademark Owner, namely, cereal preparations, namely, processed cereals, breakfast cereals, cereal based snack food; cereal bars in the nature of ready to eat, cereal derived food bars; confectionery food bars comprised mainly of muesli, processed cereal, chocolate, granola and containing milk powder and soy milk; muesli; ready to eat cereal derived food bars; confectionery bars, namely, candy bars; pancakes; coated nutrition bars, namely, chocolate based and granola based food bars for nutritional snacks not to be used as a meal replacement; malt for food purposes; syrups and other preparations for making fruit teas

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

U.S. Application No.	85099089	Application Date	08/03/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Nutritional supplements; dietary food supplements Class 030. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Cereal-based, rice-based, or granola-based snack bars and snack foods		

Attachments	76194400#TMSN.gif (1 page)(bytes) 75854595#TMSN.gif (1 page)(bytes) 85099089#TMSN.jpeg (1 page)(bytes) Notice of Opposition - Final.pdf (7 pages)(80535 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dig/
Name	David I. Greenbuam
Date	10/25/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NOTICE OF OPPOSITION

Trademark Application Serial No. 78/816,226

Filed: February 16, 2006

Priority Date: October 31, 2005

For the Mark: **LIGHTERLIFE LIFE IN BALANCE & Design**

Published in the Official Gazette on April 27, 2010

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Balance Bar Company,	§
	§
	§
Opposer,	§
	§
-against-	§
	§
Lighterlife UK Limited,	§
	§
Applicant.	§
-----X	

Opposition No. _____

To: Trademark Trial and Appeal Board

As grounds of opposition, it is alleged that:

Opposer, Balance Bar Company, a Delaware corporation with a business address of 115 Stevens Avenue, Suite 202, Valhalla, NY 10595 (“Opposer”), believes it will be damaged by registration of the designation **LIGHTERLIFE LIFE IN BALANCE & Design** in Classes 5, 29 & 30, in the name of Lighterlife UK Limited (“Applicant”), which is the subject of Application Serial No. 78/816,226, filed on the

basis of an intent-to-use and claiming the priority filing date of a foreign application, which subsequently registered.

1. For many years, and since long prior to the October 31, 2005 priority date of Applicant's application, Opposer and its predecessor-in-interest have engaged in the manufacture of nutritional food supplements, snack bar products, and meal replacement bars and advertised and sold them throughout the United States under its BALANCE trademark and BALANCE-formative trademarks. The BALANCE trademark has become distinctive of Opposer's goods and represents substantial goodwill built up by Opposer.

2. By virtue of the excellence of Opposer's products bearing its BALANCE trademark and as a result of Opposer's extensive promotional and sales activities, the BALANCE trademark is famous and was famous before October 31, 2005, and the public has come to identify the business and products denominated by the BALANCE trademark as being associated exclusively with Opposer.

3. In addition to Opposer's long-standing common law rights in and to the BALANCE trademark and formatives thereof, Opposer owns multiple registrations issued by the United States Patent and Trademark Office for the BALANCE trademark and variations, including, among others, the following:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2,745,850	Protein based, nutrient-dense snack bars
BALANCE BAR	2,659,753	Nutritional food supplements

BALANCE GOLD 2,636,101 Snack bars

4. The said registrations are valid and subsisting in the name of Opposer Balance Bar Company, are in full force and effect, and constitute evidence of Opposer's exclusive right to use BALANCE and formatives thereof in commerce in connection with the goods specified in the registrations aforesaid.

5. The said registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the said marks in commerce in connection with the goods specified in said registrations.

6. Opposer also owns a use-based trademark application for BALANCE in the United States Patent and Trademark Office, namely:

<u>MARK</u>	<u>APP. NO.</u>	<u>GOODS</u>
BALANCE	85/099,089	Nutritional supplements; dietary food supplements; cereal-based, rice-based, or granola-based snack bars and snack foods

The application shows dates of first use in commerce as early as 1992, which, upon information and belief, is prior to any date on which Applicant can rely.

7. Upon information and belief, Applicant is a company organized in the United Kingdom, located at Cavendish House Parkway, Harlow Business Centre, Harlow UK CM19 5QF.

8. On February 16, 2006, Applicant filed an application based on its intent-to-use the mark under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) and

also claiming priority to a foreign application under Section 44(d) of the Lanham Act 15 U.S.C. § 1126 (d) to register the designation LIGHTERLIFE LIFE IN BALANCE & Design (Serial No. 78/816,226) to cover goods in Classes 5, 16, 29, 30, 31, 32, 41, 42 & 44, including “meal replacement bars,” “nutritional cereal bars,” “soy based food bars,” “peanut bars,” “nut based snack bars,” “confectionery food bars,” “granola based food bars” and other related goods, and said application was published for opposition on April 27, 2010.

9. Applicant claimed a priority filing date of October 31, 2005, the date of its foreign application, and later amended its application to remove the 1(b) intent-to-use filing basis and to convert its Section 44(d) priority claim to a foreign registration basis under Section 44(e) of the Lanham Act.

10. Through its longstanding and continuous use of the BALANCE trademark, Opposer has acquired exclusive rights in the BALANCE trademark that significantly predate any date upon which Applicant may rely.

11. Opposer's BALANCE trademark is famous and became famous before October 31, 2005, the priority date claimed or any use of the LIGHTERLIFE LIFE IN BALANCE & Design designation by Applicant.

12. The "BALANCE" portion of Applicant's LIGHTERLIFE LIFE IN BALANCE & Design designation is identical to Opposer's BALANCE trademark.

13. The goods set forth in the Application are either identical or closely related and similar to the goods on which Opposer uses its BALANCE mark.

14. Opposer believes it will be damaged by registration of Applicant's LIGHTERLIFE LIFE IN BALANCE & Design designation under Section 13 of the

Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the BALANCE trademark used by Opposer in the United States as to be likely, when used on or in connection with the goods identified in the LIGHTERLIFE LIFE IN BALANCE & Design application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Opposer believes it will be damaged by registration of the LIGHTERLIFE LIFE IN BALANCE & Design designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the LIGHTERLIFE LIFE IN BALANCE & Design designation is likely to dilute the distinctive quality of Opposer's famous BALANCE trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 78/816,226 and requests that this opposition be sustained with respect to all goods in Class 5, 29 & 30 and that registration to Applicant be refused in those classes.

Please charge our Deposit Account No. 041105 in the amount of \$900.00 for the opposition fee.

Dated: New York, New York
October 25, 2010

Respectfully submitted,

EDWARDS ANGELL PALMER & DODGE, LLP

By /dig/
David I. Greenbaum
Michael R. Rizzo
750 Lexington Avenue
New York, New York 10022
(212) 308-4411
Attorney for Opposer
Opposer's Ref: 307569.4065

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 25, 2010, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Correspondent of Record at the following address:

MR. JEFFREY H. GREGER
LOWE HAUPTMAN & BERNER LLP
1700 DIAGONAL ROAD, SUITE 300
ALEXANDRIA, VA 22314-2866

/Michael R. Rizzo/
Michael R. Rizzo

EXHIBIT E15



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

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Opposition

Number: 91203829**Status:** Terminated**Filing Date:** 02/14/2012**Status Date:** 04/03/2014**General Contact Number:** 571-272-8500**Interlocutory Attorney:** JENNIFER KRISP

Defendant

Name: Doctor pHresh Nutritionals, L.L.C.**Correspondence:** FARLEY I WEISS AND MARK H WEISS

WEISS MOY PC

4204 N BROWN AVE

SCOTTSDALE, AZ 85251 3914

UNITED STATES

kmotolenich@weissiplaw.com, gmarinelli@weissiplaw.com, fweiss@weissiplaw.com

Serial #: 85175388Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** PHRESH BALANCE

Plaintiff

Name: Balance Bar Company**Correspondence:** R GLENN SCHROEDER

SCHROEDER LAW PC

110 COOPER ST 605

BABYLON, NY 11702

UNITED STATES

docket@schroederlawpc.com, gschroeder@schroederlawpc.com

Serial #: 76194400Application File**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 85099089Application File**Registration #:** 3937988**Application Status:** Registered**Mark:** BALANCE**Serial #:** 75321186Application File**Registration #:** 2659753**Application Status:** Renewed**Mark:** BALANCE BAR**Serial #:** 78416165Application File**Registration #:** 3036771**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR**Serial #:** 85099106Application File**Registration #:** 4062171**Application Status:** Registered

Mark: BALANCE BAR**Serial #:** 78409022 [Application File](#)**Registration #:** 2999244**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR GOLD**Serial #:** 77053653 [Application File](#)**Registration #:** 3436917**Application Status:** Registered**Mark:** BALANCE BARE**Serial #:** 75854595 [Application File](#)**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD**Serial #:** 77734900 [Application File](#)**Registration #:** 3760265**Application Status:** Registered**Mark:** BALANCE PURE**Serial #:** 85099094 [Application File](#)**Application Status:** Fifth Extension - Granted**Mark:** BALANCE**Serial #:** 85099118 [Application File](#)**Application Status:** Fifth Extension - Granted**Mark:** BALANCE BAR**Prosecution History**

#	Date	History Text	Due Date
30	04/03/2014	TERMINATED	
<u>29</u>	04/03/2014	<u>BD DECISION: SUSTAINED</u>	
<u>28</u>	02/07/2014	<u>NOTICE OF DEFAULT</u>	
<u>27</u>	01/09/2014	<u>EXTENSION OF TIME GRANTED</u>	
<u>26</u>	12/17/2013	<u>P RESP TO BD ORDER/INQUIRY</u>	
<u>25</u>	12/12/2013	<u>TRIAL DATES REMAIN AS SET</u>	
<u>24</u>	11/11/2013	<u>D MOT FOR EXT W/ CONSENT</u>	
<u>23</u>	08/27/2013	<u>EXTENSION OF TIME GRANTED</u>	
<u>22</u>	08/12/2013	<u>P MOT FOR EXT W/ CONSENT</u>	
<u>21</u>	08/12/2013	<u>P APPEARANCE / POWER OF ATTORNEY</u>	
<u>20</u>	06/27/2013	<u>EXTENSION OF TIME GRANTED</u>	
<u>19</u>	06/10/2013	<u>D MOT FOR EXT W/ CONSENT</u>	
<u>18</u>	05/17/2013	<u>PROCEEDINGS RESUMED</u>	
<u>17</u>	04/23/2013	<u>D MOT TO SET ASIDE DEFAULT/ACCEPT LATE ANSWER</u>	
<u>16</u>	04/08/2013	<u>NOTICE OF DEFAULT</u>	
<u>15</u>	12/14/2012	<u>EXTENSION OF TIME GRANTED</u>	
<u>14</u>	12/14/2012	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>13</u>	10/12/2012	<u>EXTENSION OF TIME GRANTED</u>	
<u>12</u>	10/12/2012	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>11</u>	08/15/2012	<u>EXTENSION OF TIME GRANTED</u>	
<u>10</u>	08/15/2012	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	

<u>9</u>	07/21/2012	<u>EXTENSION OF TIME GRANTED</u>	
<u>8</u>	07/21/2012	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>7</u>	05/18/2012	<u>EXTENSION OF TIME GRANTED</u>	
<u>6</u>	05/18/2012	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>5</u>	03/16/2012	<u>EXTENSION OF TIME GRANTED</u>	
<u>4</u>	03/16/2012	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>3</u>	02/14/2012	PENDING, INSTITUTED	
<u>2</u>	02/14/2012	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/25/2012
<u>1</u>	02/14/2012	<u>FILED AND FEE</u>	

Results as of 05/25/2014 02:25 PM

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ESTTA Tracking number: **ESTTA456467**Filing date: **02/14/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	02/15/2012
Address	115 E. Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES
Attorney information	Keith E. Sharkin Dickstein Shapiro LLP 1633 Broadway New York, NY 10019-6708 UNITED STATES sharkink@dsmo.com, lackertc@dsmo.com, goodwillj@dsmo.com, ipdocketing-ny@dicksteinshapiro.com Phone:212-277-6500

Applicant Information

Application No	85175388	Publication date	10/18/2011
Opposition Filing Date	02/14/2012	Opposition Period Ends	02/15/2012
Applicant	Doctor pHresh Nutritionals, L.L.C. 8618 N. Tatum Blvd. Phoenix, AR 85028 UNITED STATES		

Goods/Services Affected by Opposition

Class 005.

All goods and services in the class are opposed, namely: Powdered nutritional supplement drink mix

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		


Design Mark	BALANCE
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars

U.S. Registration No.	3937988	Application Date	08/03/2010
Registration Date	03/29/2011	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark	BALANCE		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Nutritional supplements; dietary food supplements Class 030. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Cereal-based, rice-based, or granola-based snack bars and snack foods		

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements		

U.S. Registration No.	3036771	Application Date	05/10/2004
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Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	4062171	Application Date	08/03/2010
Registration Date	11/29/2011	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 Cereal-derived, rice-based and granola-based snack bars		

U.S. Registration No.	2999244	Application Date	04/27/2004
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR GOLD		

Design Mark	BALANCE BAR GOLD
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2005/05/00 First Use In Commerce: 2005/05/00 Protein-based, nutrient-dense snack bars

U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		
Design Mark	BALANCE BARE		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts		

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		

Design Mark	BALANCE GOLD
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS

U.S. Registration No.	3760265	Application Date	05/12/2009
Registration Date	03/16/2010	Foreign Priority Date	NONE
Word Mark	BALANCE PURE		
Design Mark	BALANCE PURE		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 PROTEIN-BASED NUTRIENT DENSE SNACK BARS Class 030. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 CEREAL BASED SNACK BARS		

U.S. Application No.	85099094	Application Date	08/03/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BALANCE		

Design Mark	BALANCE
Description of Mark	NONE
Goods/Services	Class 032. First use: beverages, namely, fruit juices and energy drinks containing nutritional supplements

U.S. Application No.	85099118	Application Date	08/03/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark	BALANCE BAR		
Description of Mark	NONE		
Goods/Services	Class 032. First use: Non-alcoholic beverages, namely, carbonated beverages, fruit-based beverages, fruit-flavored beverages, fruit juices, colas, mineral water, still water, soft drinks, namely, non-carbonated soft drinks, soft drinks, energy drinks, sports drinks, vegetable drinks, coconut-based beverages, aloe juice beverages, smoothies containing fruit, smoothies containing grains and oats		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Keith E. Sharkin/
Name	Keith E. Sharkin
Date	02/14/2012

2. Since at least as early as 1992, and long prior to the filing date of the intent-to-use application herein opposed, Opposer has used and continues to use the trademark BALANCE in interstate commerce in connection with nutritional food supplements, snack bars and related goods. Since the date of first use of the BALANCE mark, Opposer has continuously used said mark to identify and distinguish Opposer's goods from those of others.

3. Opposer's BALANCE mark is now and ever since the date of first use has been applied to packaging for the goods and in advertisements, brochures, promotional literature, and other materials used in connection with the sale and distribution of nutritional food supplements. Opposer has extensively advertised and promoted the goods sold under the BALANCE mark. As a result of the quality of Opposer's goods, the extensive advertising for such goods, and Opposer's reputation for fair dealing with the trade and the public, the BALANCE mark has become well-known with goodwill of inestimable value to Opposer.

4. Opposer is the owner of the following registrations on the Principal Register of the United States Patent and Trademark Office:

MARK	REG. NO.	REG. DATE	GOODS
BALANCE	2,745,850	August 5, 2003	Class 29: Protein based, nutrient-dense snack bars
BALANCE	3,937,988	March 29, 2011	Class 5: Nutritional supplements; dietary food supplements Class 30: Cereal-based, rice-based, or granola-based snack bars and snack foods
BALANCE BAR	2,659,753	December 10, 2002	Class 5: Nutritional food supplements
BALANCE BAR	3,036,771	December 27, 2005	Class 29: Protein-based, nutrient-dense snack bars
BALANCE BAR	4,062,171	November 29, 2011	Class 30: Cereal-derived, rice-based and granola-based snack bars

MARK	REG. NO.	REG. DATE	GOODS
BALANCE BAR GOLD	2,999,244	September 20, 2005	Class 29: Protein-based, nutrient-dense snack bars
BALANCE BARE	3,436,917	May 27, 2008	Class 29: Protein-based, nutrient-dense snack bars Class 30: Grain-based food bars also containing fruits and nuts
BALANCE GOLD	2,636,101	October 15, 2002	Class 30: Snack bars
BALANCE PURE	3,760,265	March 16, 2010	Class 29: Protein-based nutrient dense snack bars Class 30: Cereal based snack bars

Each of these registrations is valid and subsisting, unrevoked and uncanceled, and in full force and effect. Moreover, Opposer's registrations for BALANCE, BALANCE BAR, BALANCE BAR GOLD, and BALANCE GOLD have become incontestable by operation of law pursuant to 15 U.S.C. § 1065, specifically Registration Nos. 2,745,850; 2,659,753; 3,036,771; 2,999,244; and 2,636,101.

5. Opposer has also filed the following applications on the Principal Register of the United States Patent and Trademark Office:

MARK	SERIAL NO.	FILING DATE	GOODS
BALANCE	85/099,094	August 3, 2010	Class 32: Beverages, namely, fruit juices and energy drinks containing nutritional supplements
BALANCE BAR	85/099,118	August 3, 2010	Class 32: Non-alcoholic beverages, namely, carbonated beverages, fruit-based beverages, fruit-flavored beverages, fruit juices, colas, mineral water, still water, soft drinks, namely, non-carbonated soft drinks, soft drinks, energy drinks, sports drinks, vegetable drinks, coconut-based beverages, aloe juice beverages, smoothies containing fruit, smoothies containing grains and oats

The BALANCE and BALANCE formative registrations and applications are collectively referred to as the “BALANCE Marks”.

6. By the application herein opposed, Applicant seeks to register the alleged mark PHRESH BALANCE for “powdered nutritional supplement drink mix”.

7. The goods covered by the application for the designation PHRESH BALANCE are the same or are closely related to the goods on which Opposer has previously used or filed the BALANCE Marks, and will be encountered by the same or similar class of purchasers as those interested in or familiar with the goods of Opposer under the BALANCE Marks.

8. Applicant’s Mark is virtually identical to the BALANCE Marks owned by Opposer and incorporates Opposer’s BALANCE mark in its entirety.

9. Applicant’s Mark is so similar to Opposer’s previously filed, used, and registered BALANCE Marks as to be likely, when applied to Applicant’s goods, to cause confusion, to cause mistake, and to deceive with consequent injury to Opposer and the public.

10. Applicant’s Mark so closely resembles Opposer’s previously filed, used, and registered BALANCE Marks that potential purchasers of the goods to be offered under Applicant’s Mark would be likely to believe that Opposer is the source of such goods, or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with the goods of Applicant, thereby creating a likelihood of confusion, deception or mistake, all to the damage of Opposer.

11. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's Mark and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer to the BALANCE Marks.

12. As alleged above, Opposer has used the BALANCE mark in commerce since at least as early as 1992 in connection with nutritional food supplements. The BALANCE mark has since become a famous trademark with strong and distinctive character qualifying for protection under Section 13 (15 U.S.C. §1063 as amended) and Section 43(c)(15 U.S.C. §1125(c)) of the Lanham Act.

13. Applicant's application Serial No. 85/175,388 was filed on November 12, 2010 and therefore is subject to the provisions of Section 13 as amended and Section 43(c) of the Lanham Act.

14. Applicant's use and registration of the mark PHRESH BALANCE as shown in Application Serial No. 85/175,388 will cause dilution of the distinctive quality of the BALANCE mark and will lessen the capacity of Opposer's famous and distinctive BALANCE mark to distinguish the Opposer's goods from those of others all to the damage of Opposer.

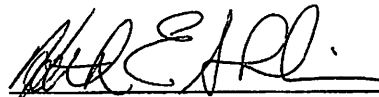
15. Opposer will be damaged by the registration of Applicant's Mark because such registration would support and assist Applicant in the dilution of the well-known and famous BALANCE mark pursuant to 15 U.S.C. §1125(c)(1) in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer respectfully requests that the opposition to application Serial No. 85/175,388 for registration of PHRESH BALANCE be sustained and that the registration sought by Applicant be denied.

Dated: New York, New York
February 14, 2012

DICKSTEIN SHAPIRO LLP
Attorneys for Opposer

By:



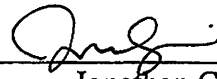
Keith E. Sharkin
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing Notice of Opposition was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope address to Applicant's attorney of record:

Farley I. Weiss and Mark H. Weiss
Weiss & Moy, P.C.
4204 N. Brown Avenue
Scottsdale, AZ 85251-3914

On February 14, 2012



Jonathan Goodwill

EXHIBIT E16



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Opposition

Number: 91212477**Status:** Pending**Filing Date:** 09/14/2013**Status Date:** 09/14/2013**General Contact Number:** 571-272-8500**Interlocutory Attorney:** CHERYL S GOODMAN

Defendant

Name: GFA Brands, Inc.**Correspondence:** MARTA S LEVINE

QUARLES & BRADY LLP

411 E WISCONSIN AVE, SUITE 2350

MILWAUKEE, WI 53202-4461

UNITED STATES

tm-dept@quarles.com, johanna.wilbert@quarles.com,

david.cross@quarles.com, DRC@quarles.com, marta.levine@quarles.com,

jwilbert@quarles.com

Serial #: 85751520Application File**Application Status:** Opposition Pending**Mark:** EARTH BALANCE

Plaintiff

Name: Balance Bar Company**Correspondence:** R GLENN SCHROEDER

SCHROEDER LAW PC

110 COOPER STREET , #605

BABYLON, NY 11702

UNITED STATES

docket@schroederlawpc.com, gschroeder@schroederlawpc.com

Serial #: 75854595Application File**Registration #:** 2636101**Application Status:** Renewed**Mark:** BALANCE GOLD**Serial #:** 76194400Application File**Registration #:** 2745850**Application Status:** Renewed**Mark:** BALANCE**Serial #:** 78409022Application File**Registration #:** 2999244**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR GOLD**Serial #:** 78416165Application File**Registration #:** 3036771**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** BALANCE BAR

Serial #: 77053653 Application File
Application Status: Registered
Mark: BALANCE BARE
Serial #: 77734900 Application File
Application Status: Registered
Mark: BALANCE PURE
Serial #: 85099089 Application File
Application Status: Registered
Mark: BALANCE
Serial #: 85099106 Application File
Application Status: Registered
Mark: BALANCE BAR

Registration #: 3436917**Registration #:** 3760265**Registration #:** 3937988**Registration #:** 4062171**Prosecution History**

#	Date	History Text	Due Date
<u>10</u>	04/22/2014	<u>D EXPERT DISCLOSURES</u>	
<u>9</u>	04/21/2014	<u>CORRECTION TO SCHEDULE</u>	
<u>8</u>	04/16/2014	<u>EXTENSION OF TIME GRANTED</u>	
<u>7</u>	04/15/2014	<u>P MOT FOR EXT W/ CONSENT</u>	
<u>6</u>	02/20/2014	<u>TRIAL DATES REMAIN AS SET</u>	
<u>5</u>	02/18/2014	<u>STIPULATED PROTECTIVE ORDER</u>	
<u>4</u>	10/10/2013	<u>ANSWER</u>	
<u>3</u>	09/14/2013	PENDING, INSTITUTED	
<u>2</u>	09/14/2013	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/24/2013
<u>1</u>	09/14/2013	<u>FILED AND FEE</u>	

Results as of 05/25/2014 02:26 PM

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ESTTA Tracking number: **ESTTA559492**

Filing date: **09/14/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	09/15/2013
Address	115 E. Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES
Attorney information	R. Glenn Schroeder Schroeder Law PC 110 Cooper Street #605 Babylon, NY 11702 UNITED STATES docket@schroederlawpc.com,gschroeder@schroederlawpc.com Phone:631-649-6109

Applicant Information

Application No	85751520	Publication date	03/19/2013
Opposition Filing Date	09/14/2013	Opposition Period Ends	09/15/2013
Applicant	GFA Brands, Inc. Suite 260 115 West Century Road Paramus, NJ 07652 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. Opposed goods and services in the class: Nut and seed-based snack bars

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars		

U.S. Registration No.	2999244	Application Date	04/27/2004
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/05/00 First Use In Commerce: 2005/05/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	3036771	Application Date	05/10/2004
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts		

U.S. Registration No.	3760265	Application Date	05/12/2009
Registration Date	03/16/2010	Foreign Priority Date	NONE
Word Mark	BALANCE PURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 PROTEIN-BASED NUTRIENT DENSE SNACK BARS Class 030. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 CEREAL BASED SNACK BARS		

U.S. Registration No.	3937988	Application Date	08/03/2010
Registration Date	03/29/2011	Foreign Priority Date	NONE
Word Mark	BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Nutritional supplements; dietary food supplements Class 030. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Cereal-based, rice-based, or granola-based snack bars and snack foods		

U.S. Registration No.	4062171	Application Date	08/03/2010
Registration Date	11/29/2011	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 Cereal-derived, rice-based and granola-based snack bars		

Attachments	101-6_Notice_of_Opposition.pdf(1243698 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/r. glenn schroeder/
Name	R. Glenn Schroeder

Date	09/14/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 85/751,520
Filed: October 11, 2012
Published for Opposition on March 19, 2013
Trademark: EARTH BALANCE

BALANCE BAR COMPANY,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.

:
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:
:
: Opposition No.
:
:
:
:
:
:

Commissioner for Trademarks
P.O. Box 1451
Alexandria , VA 22313-1451

NOTICE OF OPPOSITION

BALANCE BAR COMPANY ("Opposer"), a Delaware corporation, with a place of business at 115 E. Stevens Avenue, Suite 202, Valhalla, New York 10595, believes that it will be damaged by registration of the mark shown in Serial No. 85/751,520 to GFA BRANDS, INC., ("Applicant"), which application was published for opposition on March 19, 2013, and hereby opposes, through its attorneys, the registration of said mark for "nut and seed-based snack bars" in International Class 29.

As grounds for opposition it is alleged that:

1. Opposer is a Delaware corporation, with a place of business at 115 E. Stevens Avenue, Suite 202, Valhalla, New York 10595.
2. Opposer sells, and has sold, snack bars; protein-based, nutrient-dense snack bars;

grain-based food bars also containing fruits and nuts; and cereal-based, rice-based, or granola-based snack bars and snack foods.

3. Opposer utilizes the marks BALANCE; BALANCE BAR; BALANCE GOLD; BALANCE BAR GOLD; BALANCE BARE; and BALANCE PURE (hereinafter the “Trademarks”), as trademarks indicating the source of origin for its products.

4. Since prior to the filing date of the above-identified application, Opposer has been using the Trademarks in interstate commerce in connection with the goods described in Paragraph 2.

5. Opposer is the owner of United States Registration No. 2,636,101 for the mark BALANCE GOLD as used in connection with snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

6. Opposer is the owner of United States Registration No. 2,745,850 for the mark BALANCE as used in connection with protein based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

7. Opposer is the owner of United States Registration No. 2,999,244 for the mark BALANCE BAR GOLD as used in connection with protein-based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

8. Opposer is the owner of United States Registration No. 3,036,771 for the mark BALANCE BAR as used in connection with protein-based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

9. Opposer is the owner of United States Registration No. 3,436,917 for the mark BALANCE BARE as used in connection with protein-based, nutrient-dense snack bars in International Class 29; and grain-based food bars also containing fruits and nuts, in International Class 30. The foregoing registration is valid, and in full force and effect.

10. Opposer is the owner of United States Registration No. 3,760,265 for the mark BALANCE PURE as used in connection with protein-based nutrient dense snack bars in

International Class 29; and cereal based snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

11. Opposer is the owner of United States Registration No. 3,937,988 for the mark BALANCE as used in connection with cereal-based, rice-based, or granola-based snack bars and snack foods, in International Class 30. The foregoing registration is valid, and in full force and effect.

12. Opposer is the owner of United States Registration No. 4,062,171 for the mark BALANCE BAR as used in connection with cereal-derived, rice-based and granola-based snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

13. Opposer has expended substantial amounts of money, time and effort in advertising and promoting its Trademarks throughout the United States so that the public has come to associate and attribute usage of the Trademarks with Opposer. Moreover, as a result of these efforts, Opposer has developed a family of BALANCE marks having substantial goodwill and recognition in the marketplace.

14. Applicant's mark is confusingly similar to Opposer's Trademarks whereby use of Applicant's mark on "nut and seed-based snack bars", as recited in Applicant's application, will create a likelihood of confusion, mistake or deception among the purchasing public.

15. The "nut and seed-based snack bars" recited in Applicant's application are substantially similar, if not identical, to the goods offered by Opposer (mentioned hereinabove in Paragraph 2) under the Trademarks, and to the goods listed in Opposer's registrations identified hereinabove in Paragraphs 5 to 12, all of such goods being likely to travel through similar channels of trade.


16. The registration of Applicant's mark in connection with "nut and seed-based snack bars" would be in direct conflict with the proper function of a trademark; that is, as a designation of the sole and exclusive origin of goods or services, considering Opposer's prior use of and registration of its Trademarks.

17. Opposer, as the owner of valid federal trademark registrations and as the prior user of such marks, will be damaged if registration of Applicant's mark, as published, is granted.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained, that the above-identified application be rejected and that the registration of the mark shown in Application Serial No. 85/751,520 be refused.

Respectfully submitted,
BALANCE BAR COMPANY

Dated: 14 September 2013

By: 
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Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** has been served via first-class mail this 14^h day of September, 2013 upon the following:

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